Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 166)

Supreme Court of the United States

OCTOBER TERM, 1961

No. 134

A/S J. LUDWIG MOWINCKELS REDERI, ET AL.,
APPELLANTS,

vs.

ISBRANDTSEN CO., INC., ET AL.

No. 135

FEDERAL MARITIME BOARD, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED JUNE 21, 1961.

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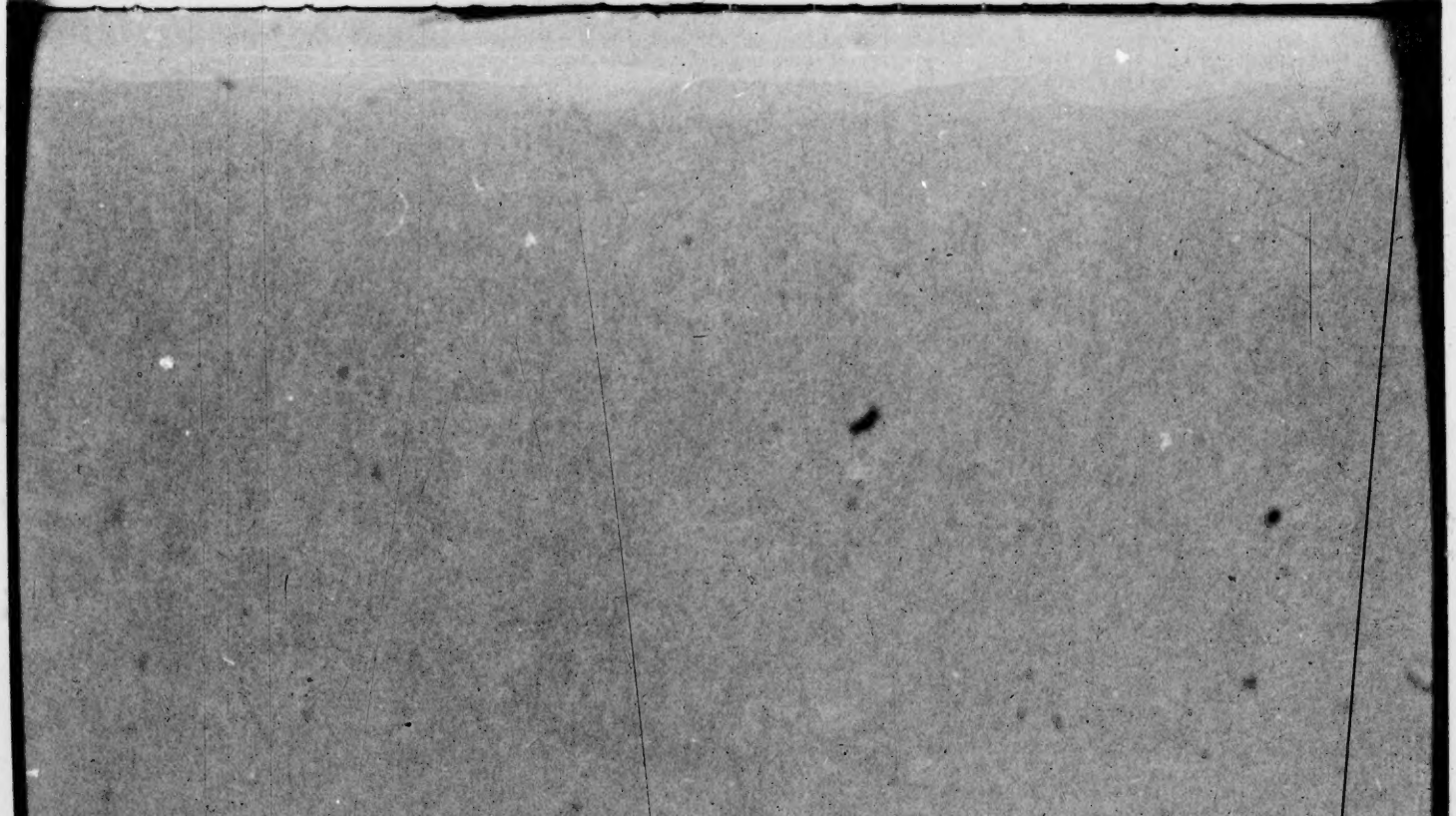

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INDEX

	Original	Print
Record from U.S.D.C. for the Southern District of New York	1	1
Amended complaint	5	1
Exhibit "A"—Order of the United States Maritime Commission of January 2, 1948 approving agreements	14	10
Agrement No. 4490-6	15	11
Agrement No. 4490	16	13
Agreement No. 4490-A	20	20
Exhibit "B"—Agrement No. 7000	22	22
Agreement No. 7000-5	25	25

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	Original	Print
Record from U.S.D.C. for the Southern District of New York—Continued		
Amended complaint—continued		
Exhibits—Continued		
Exhibit "C"—Agreement No. 7920-1	26	26
Agreement No. 7920	28	29
Exhibit "D"—Letter, dated October 1, 1948, from C. R. Andrews to Merchant Shippers and offer of contracts enclosed	30	31
Exhibit "E"—Letter dated, September 28, 1948, from Van Nievelt, Goudriaan & Co. to Exporters and forwarding Agents in the North Atlantic Traffic introducing the Conference contract system	34	31
Appendix "A"—Sections of the Shipping Act of 1916 as amended	35	38
Intervention of the United States Maritime Commission	39	41
Answer to amended complaint and motion to dismiss	42	41
Answer of the United States	49	45
Stipulation and order providing for substitution of Federal Maritime Board	53	48
Answer of Federal Maritime Board	56	49
Exhibit "A"—Report and order of the Board in Isbrandtsen Company, Inc. vs. North Atlantic Continental Freight Conference et al.	59	51
Transcript of hearing held December 20, 1950, New York	78	68
Carriers' motion to strike answer of Department of Justice	161	116
Federal Maritime Board motion for reconsideration	164	117
Defendant carriers' motion for reconsideration	165	117
Supplemental opinion	166	118
Appendix by Frank, J.	195	136
Final order and judgment	218	148
Order denying motions for reconsideration	220	149
Carrier appellants' petition for appeal	221	150
Order allowing appeal	224	151
Citation on appeal (omitted in printing)	227	
Assignment of errors and prayer for reversal	230	152
Statement required by Paragraph 2, Rule 12, of the rules of the Supreme Court of the United States (omitted in printing)	234	
Praecipe (omitted in printing)	240	
Petition for appeal by Federal Maritime Board	243	155
Order allowing appeal	244	155
Citation on appeal (omitted in printing)	245	
Assignment of errors and prayer for reversal	246	156

	Original	Print
Record from U.S.D.C. for the Southern District of New York—Continued		
Statement required by Paragraph 2, Rule 12 of the rules of the Supreme Court of the United States (omitted in printing)	249	
Praecipe (omitted in printing)	253	
Stipulation authorizing certification of only one record (omitted in printing)	255	
Clerk's certificate (omitted in printing)	256	
Carrier appellants' statement of points to be relied upon and designation of parts of record to be printed	257	158
Statement of points to be relied upon by appellant Federal Maritime Board and designation of parts of record to be printed	262	159
Designation by appellee, Isbrandtsen Company of additional Parts of record to be printed	264	160
Designation by appellee, Secretary of Agriculture of additional parts of record to be printed	267	160
Stipulation and addition to the record	271	161
Motion for leave to intervene by the Secretary of Agriculture of the United States	274	162
Order allowing intervention	277	163
Petition of the Secretary of Agriculture of the United States for leave to intervene	281	164
Order of the United States Maritime Commission allowing intervention	285	166
Order noting probable jurisdiction	287	167
Record of proceedings before United States Maritime Commission	289	167
Complaint	289	167
Exhibit "A"—Order of the United States Maritime Commission of January 2, 1948 approving agreements (copy) (omitted in printing)	295	
Agreement No. 4490-6 (copy) (omitted in printing)	296	
Exhibit "B"—Agreement No. 7920-1 (copy) (omitted in printing)	302	
Exhibit "C"—Order of U.S.D.C., Southern New York, granting preliminary injunction in Isbrandtsen Co. Inc. vs. United States of America et al. Civil Action No. 47-749	304	172
Answer of respondent carriers to complaint	310	177
Motion for expedited procedure	315	180
Answer to complainants' motion	318	182
Order denying motion	321	183
Transcript of proceedings at prehearing conference	323	184
Letter from Commission to Roscoe H. Hupper enclosing copy of recommended decision	352	202

	Original	Print
Record of proceedings before United States Maritime Commission—Continued		
Recommended decision of examiner	353	202
Order remanding record to examiner	374	225
Motion of Isbrandtsen Company, Inc. to amend Commission's order of remand	375	225
Order modifying order of remand	380	229
Recommended supplemental decision of examiner	381	230
Report and order of the Board (copies) (omitted in printing)	413	
Transcript of hearing	433	262
Appearances	433	262
Colloquy	435	263
Statements of counsel	442	267
Offers in evidence	452	274
Statement by Mr. Hupper	470	285
Testimony of Hans Isbrandtsen (resumed)	944	564
Charles R. Andrews	990	592
Colloquy	586	350
Testimony of Matthew S. Crinkley	587	351
Testimony of Hans Isbrandtsen (resumed)	944	564
Charles R. Andrews	990	592
Charles D. Turner	1058	632
Charles R. Andrews (resumed)	1107	661
James Sinclair	1145	685
Charles R. Andrews (recalled)	1211	722
Morris S. Rosenthal	1278	764
Arnold K. Henry	1341	802
Charles R. Andrews (recalled)	1436	859
Robert C. Lee	1586	949
James Sinclair (resumed)	1649	984
Hymen I. Malatzky	1705	1019
Hans Isbrandtsen (recalled)	1732	1035
Robert C. Lee (resumed)	1782	1066
P. E. McIntyre	1787	1069
C. W. Kenick	1790	1071
Matthew S. Crinkley (recalled)	1794	1074
Hans Isbrandtsen (recalled)	1831	1097
Hymen I. Malatzky (recalled)	1841	1103

EXHIBITS

2—Memorandum of agreement on the Westbound North Atlantic trade by the Continental North Atlantic Westbound Freight Conference	1848	1106
3—Agreement No. 4490—Schedule of Rates and Tariff Rules No. 18	1851	1110
4—Tariff No. 2 for Westbound Cargo	1855	1115
5A-5D—Translations of circular letters dated January 17, March 14, May 8, July 18, 1939 from Vinke & Co. addressed to shippers or consignees	1859	1117

	Original	Print
Record of proceedings before United States Maritime Commission—Continued		
Exhibits—Continued		
6—Letter dated October 25, 1948 from Hail & Cotton, Inc. to Isbrandtsen Company, Inc.	1869	1122
7—Letter dated October 27, 1948 from Boler Petroleum Company to Isbrantsen Company, Inc.	1870	1123
8—Letter dated October 28, 1948 from Louis Marx & Co. to Isbrandtsen Company, Inc.	1871	1124
9—Copy of agreement between Messrs. Stofzuiger Centrale P. Ilzerman and Isbrandtsen-Moller Co., Inc., November 17, 1936	1872	1125
10—Letter dated August 30, 1948 from United States Maritime Commission to North Atlantic Continental Freight Conference Chairman	1873	1126
11—Letter dated December 19, 1935 from Isbrandtsen-Moller Company, Inc. to Anaconda Wire & Cable Company	1875	1128
12A—List of 581 Commodities on Which the Rates of Isbrandtsen Co. Inc., are lower than the rates of North Atlantic Continental Freight Conference Lines	1876	1130
12B—Comparison of Conference and Isbrandtsen-Moller Co., Inc. rates from November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam	1903	1159
12C—List of Isbrandtsen-Moller Co., Inc. Contract rates for period January 2, 1937 to August 31, 1939 to Antwerp-Rotterdam-Amsterdam	1916	1178
15—Statement showing domestic exports of selected agricultural products to the Netherlands, etc.	1921	1185
16—Statement showing domestic exports of selected agricultural products, also commodity weights with freight charges, etc.	1922	1188
17—Statement showing domestic exports of principal agricultural products to all foreign countries, etc.	1923	1189
18—Letter dated October 1, 1948 from Trans-Atlantic Associated Freight Conferences to Joseph Turner & Co.	1924	1194
19—Letter dated October 6, 1948 from Joseph Turner & Co. to Trans-Atlantic Associated Freight Conference	1925	1194
20—Letter dated October 14, 1948 from Trans-Atlantic Associated Freight Conference to Joseph Turner & Co.	1926	1194
25—Form letter of Isbrandtsen-Moller Company, Inc. in which the offer to make a contract rate was put forward to shippers	1927	1194

	Original	Print
Record of proceedings before United States Maritime Commission—Continued		
Exhibits—Continued		
28—Copy of cable dated May 25, 1949 from Vinke to Isbrandtsen	1928	1195
29—Copy of letter dated May 19, 1945 from Vinke & Co. to Isbrandtsen Company, Inc.	1929	1195
30—Cover page and extract from report of Committee on International Transport, May 1949, headed "Rate Conferences."	1930	1196

[fols. 1-5]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 47-749

ISBRANDTSEN CO., INC., *Plaintiff*,

v.

UNITED STATES OF AMERICA, NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE, Continental North Atlantic Westbound Freight Conference, A/S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corp., Compagnie Generale Transatlantique, Compagnie Maritime Belge, Cunard White Star Ltd., Ellerman's Wilson Line, Ltd., Dampskibsselskabet AF 1912 A/S, A/S Dampskibsselskabet Svendborg, N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij, United States Lines Company, Waterman Steamship Corporation, Lykes Bros. Steamship Co., Inc., South Atlantic Steamship Line, Inc., *Defendants*

AMENDED COMPLAINT

To the Honorable the Judges of the United States District Court for the Southern District of New York:

1. Plaintiff, Isbrandtsen Co., Inc., is an American Flag carrier by water in the transportation of property between ports on the North Atlantic Coast of the United States and the Gulf of Mexico and ports in various parts of the world including ports in Belgium, Holland, and Germany. Plaintiff was organized under the laws of New York, on February 24, 1941, under the name Isbrandtsen Steamship Co., Inc., which name was changed to Isbrandtsen Co., Inc., on May 6, 1944.

2. This complaint is filed, and the jurisdiction of this Court is invoked, pursuant to the provisions of the Shipping Act of 1916, as amended, 46 U. S. C. 830, the Urgent Deficiencies Act of 1913, as amended, 28 U. S. C. Sec. 2284, 2321-2325, and the Administrative Procedure Act of 1946, 5 U. S. C. 1009, to enjoin, set aside, annul and suspend orders

and approvals of the United States Maritime Commission and its successor, Federal Maritime Board (hereinafter referred to as Commission and Board, respectively) dated January 2, 1948 approving Conference Agreement designated by the Commission as Conference Agreement No. [fol. 6] 4490-6, August 24, 1948 approving Conference Agreement designated by the Commission as Conference Agreement No. 7920-1, and December 1, 1950 dismissing plaintiff's complaint challenging the validity of the orders dated Jan. 2, 1948 and Aug. 24, 1948. Said Commission orders and approvals purport to authorize the defendant steamship lines concertedly to coerce shippers in the North Atlantic trade to patronize defendant steamship lines exclusively and to retaliate against shippers in such trade who patronize plaintiff.

3. The United States of America is made a defendant herein pursuant to Section 2322 of the Judicial Code, 28 U. S. C. S. 2322.

4. Defendant North Atlantic Continental Freight Conference is a voluntary association and organization of common carrier steamship lines. Said defendant has its office and principal place of business at 80 Broad Street, New York 4, N. Y. The following defendants are members of the North Atlantic Continental Freight Conference: A/S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corp., Compagnie General Transatlantique, Compagnie Maritime Belge, Cunard White Star, Ltd., Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svenborg, Ellerman's Wilson Line, Ltd., N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij, United States Lines Company, and Waterman Steamship Corporation.

5. Defendant Continental North Atlantic Westbound Freight Conference is a voluntary association and organization of common carrier steamship lines. Said defendant has its office and principal place of business in the United States at 80 Broad Street, New York 4, N. Y. All of the members of the North Atlantic Continental Freight Conference, except Cunard White Star, Ltd., Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svenborg, and Ellerman's Wilson Line, Ltd., are members of the Continental North Atlantic Westbound Freight Conference, which

also includes defendants South Atlantic Steamship Line, Inc.

6. Defendant A/S J. Ludwig Mowinckels Rederi is a corporation organized and existing under the laws of Norway and maintains an office for the transaction of business at 42 Broadway, New York 4, N. Y.

7. Defendant Black Diamond Steamship Corporation is a corporation organized and existing under the laws of Maryland and maintains an office for the transaction of business at 39 Broadway, New York 6, N. Y.

[fol. 7] 8. Defendant Compagnie Generale Transatlantique is a corporation organized and existing under the laws of France and maintains an office for the transaction of business at 17 State Street, New York 4, N. Y.

9. Defendant Compagnie Maritime Belge is a corporation organized under the laws of Belgium and maintains an office for the transaction of business at 10 Pearl Street, New York, N. Y.

10. Defendant Cunard White Star, Ltd., is a corporation organized and existing under the laws of Great Britain and maintains an office for the transaction of business at 25 Broadway, New York 4, N. Y.

11. Ellerman's Wilson Line, Ltd., is a corporation organized and existing under the laws of Great Britain and maintains an office for the transaction of business at 24 State Street, New York 4, N. Y.

12. Defendant Dampskibsselskabet af 1912 A/S is a corporation organized and existing under the laws of Denmark and maintains an office for the transaction of business at 30 Broad Street, New York 4, N. Y.

13. Defendant A/S Dampskibsselskabet Svendborg is a corporation organized and existing under the laws of Denmark and maintains an office for the transaction of business at 30 Broad Street, New York 4, N. Y.

14. Defendant Nederlandsche Stoomvaart Maatschappij is a corporation organized and existing under the laws of the Netherlands and maintains an office for the transaction of business at 29 Broadway, New York 6, N. Y.

15. Defendant United States Lines Company is a corporation organized and existing under the laws of New

Jersey and maintains an office for the transaction of business at 1 Broadway, New York 4, N. Y.

16. Defendant Waterman Steamship Corporation is a corporation organized and existing under the laws of Alabama and maintains an office for the transaction of business at 19 Rector Street, New York, N. Y.

18. South Atlantic Steamship Line, Inc., is a corporation organized and existing under the laws of Delaware and maintains an office for the transaction of business at 17 Battery Place, New York, N. Y.

[fol. 8] 19. Each of the above-named corporate defendants is engaged as a common carrier by water in the transportation of property in foreign trade between the North Atlantic ports of the United States and the ports of Holland, Belgium, and Germany. The corporate defendants engaged in the Eastbound trade from the United States are associated together in the defendant North Atlantic Continental Freight Conference under an agreement known as Conference Agreement No. 4490, first approved by the Commission under Sec. 15 of the Shipping Act of 1916, as amended, on August 24, 1935 and thereafter continuously approved as amended down to and including the Order of the Commission dated January 2, 1948 which, under an agreement known as Conference Agreement No. 4490-6, approved the reconstitution of the Conference. True copies of said Agreements 4490, 4490-6, and the Commission's Order of January 2, 1948 are attached to this complaint as Exhibit A and are made a part hereof.

20. The corporate defendants engaged in the Westbound trade from ports in Holland, Belgium and Germany to ports on the North Atlantic coast of the United States are associated together in the defendant Continental North Atlantic Westbound Freight Conference, under an agreement known as Conference Agreement No. 7000, first approved by the Commission under the Shipping Act of 1916, as amended, on February 16, 1940 and thereafter continuously approved as amended to May 7, 1948. A true copy of said Agreement, as amended to May 7, 1948, is attached to this complaint as Exhibit B and is made a part hereof.

21. The defendant lines members of the North Atlantic Westbound Freight Conference are also parties to a cross-

agreement with the French North Atlantic Westbound Freight Conference, known as Conference Agreement No. 7920, first approved by the Commission, under Section 15 of the Shipping Act of 1916, as amended, on July 1, 1947 and thereafter continuously approved as amended to August 24, 1948, when the Commission approved Conference Agreement No. 7920-1. True copies of said Agreements, as amended to August 24, 1948, are attached to this complaint as Exhibit C and are made a part hereof.

22. Contrary to the specific prohibitions contained in Sections 14 and 15 of the Shipping Act of 1916, as amended, 46 U.S.C. 812, 814, against deferred rebates or any retaliatory or discriminatory practice against a shipper for [fol. 9] patronizing any other carrier, the Commission Actions of January 2, 1948, approving Conference Agreement No. 4490-6, and of August 24, 1948, approving Conferecace Agreement No. 7920-1, purport to authorize defendant carriers to establish and maintain a system of "contract rates" and higher "non-Contract rates", the sole consideration for the enjoyment of the lower "contract rates" being the agreement of the shipper to patronize defendant Conferences' lines exclusively in effecting the shipper's transportation requirements in said North Atlantic trade.

23. Since inauguration by Plaintiff's predecessor, Isbrandtsen-Moller Co., Inc., in 1931 scheduled sailings in the trade between ports on the North Atlantic coast of the United States and ports in Holland, Belgium and Germany. Such unlawful exclusive patronage systems have not generally been employed in such trade, and plaintiff had no knowledge that the Commission had ever purported to authorize the employment by defendant Conferences of such unlawful devices. However, on or about October 1, 1948, defendant Conferences and members thereof began to circularize the shippers in the North Atlantic trade with notices that effective November 1, 1948, the exclusive patronage contract system would be instituted simultaneously on both Eastbound and Westbound trade, covering substantially all commodities transported in that trade. True copies of such notices are attached hereto as Exhibits D and E, and are made a part hereof.

24. Said notices indicate that the "contract rates" to

be instituted under the exclusive patronage system are to be generally the same freight rates as are currently in effect, but from November 1, 1948, such freight rates shall be available only to shippers who agree, in writing, to employ defendant Conferences' lines exclusively for all of their shipments. Any shipper who does not sign an exclusive patronage contract, for the period from November 1, 1948, to December 31, 1949, will, on and after November 1, 1948, be compelled to pay a rate 20% higher than the existing rates, which will become the "contract rates" charged shippers signing contracts on all shipments effected by means of defendant Conferences' lines. Any shipper who signs an exclusive patronage contract and thereafter breaches it by patronizing plaintiff, or other [fol. 10] non-conference line, is liable to the Conference, for twice the amount of freight that would have been payable to a Conference line if he had shipped by such Conference line under the contract. In addition, such shipper is subject to having his contract cancelled and also to being required to pay the 20% higher non-contract rates thereafter on all shipments sought to be effected by means of defendant Conferences' lines.

25. Upon learning of the proposed institution of the unlawful exclusive patronage system by defendant conferences on November 1, 1948, it came to plaintiff's knowledge for the first time that, by its approval, dated January 2, 1948, of Conference Agreement No. 4490-6, and its approval dated August 24, 1948, of Conference Agreement No. 7920-1, the Commission had purported to authorize the employment of the unlawful exclusive patronage contract system through the device of "contract" and "non-contract" rates.

25a. Upon learning of the aforesaid orders purporting to authorize the use of the exclusive patronage contract system, Plaintiff filed its complaint in this Court, praying the Court permanently to enjoin the use of such system and pending such determination to issue a preliminary injunction to preserve the status quo in the trade. On January 13, 1949, this Court granted a preliminary injunction as prayed, on condition that the Plaintiff file and diligently prosecute before the Commission a complaint challenging the validity of the aforesaid orders. Pursuant

to such condition, Plaintiff duly filed and prosecuted its complaint before the Commission, and on December 1, 1950, the Board entered its final order dismissing Plaintiff's complaint.

26. So much of the Commission and Board Orders and Approvals of January 2, 1948; August 24, 1948, and December 1, 1950, as purport to authorize defendant steamship lines to use the exclusive patronage contract system exceed the authority of the Commission under Sec. 15 of the Shipping Act of 1916, as amended, 46 U.S.C. 14 and are absolutely null and void by virtue of contravening the specific provisions contained in Sec. 14 of the Shipping Act of 1916, as amended, 46 U.S.C. 812. (Pertinent sections of the Shipping Act of 1916, as amended, are attached hereto as Appendix A.)

27. Plaintiff further alleges that if Section 15 of the Shipping Act of 1916, as amended, 46 U.S.C. 14, may be construed as authorizing or empowering the Commission to issue the Orders and Approvals complained of, then said section 15 is unconstitutional and void in that it constitutes a delegation of the legislative power to the Commission in violation of Article 1, Sec. 1, and Article 1, Sec. 8, paragraph 18 of the Constitution of the United States.

28. Plaintiff further alleges that the Orders and Approvals complained of, if held to be authorized by any of the provisions of the Shipping Act of 1916, as amended, deprives him of his property without due process of law contrary to the Fifth Amendment of the Constitution of the United States.

[fol. 11] 29. Acting under the authority purportedly granted to them by the Commission, defendant Conferences and defendant steamship lines are threatening to execute, effective as of November 1, 1948, so much of the above-described Commission Orders and Approvals as purport to authorize the exclusive patronage contract system by seeking to coerce shippers in the said North Atlantic trade to execute such exclusive patronage contracts, to the irreparable injury and damage of the plaintiff.

30. Because Isbrandtsen Company, Inc., maintains scheduled sailings from North Atlantic ports on an average of twice monthly, most important shippers in the North Atlantic trade can not rely exclusively upon Isbrandtsen to

effect all of their transportation requirements. Each such shipper in said trade must normally, during the course of a year, secure a part of his transportation requirements from member lines of the defendant conferences. Thus the necessary effect of requiring such shippers in the North Atlantic trade to secure all or none of their transportation requirements from member lines of the Conferences, is to compel such shippers completely to cease patronizing Plaintiff.

31. By their combined economic power, exerted through the threatened imposition of the aforesaid coercive rate differentials, the defendants, on information and belief, have already induced and compelled many shippers in said North Atlantic trade to enter into exclusive patronage contracts with defendant Conferences, for and on behalf of their members, and are threatening other shippers with the imposition of the oppressive and onerous "non-contract" freight rates, if they continue to patronize plaintiff after November 1, 1948. As a result, shippers have been compelled to notify plaintiff of their inability to make shipments on plaintiff's lines, after November 1, 1948, all to the irreparable injury and damage of plaintiff.

Wherefore, plaintiff prays:

(a) That summons issue to each of the defendants to appear herein and to answer the allegations contained in this complaint and to abide by and perform such orders and decrees as the Court may make in the premises;

(b) That this Court, as soon as practicable, convene a specially constituted court of three judges as required by [fol. 12] Title 28, Section 2284, of the United States Code, and that a preliminary or interlocutory injunction be entered herein restraining, enjoining and suspending until the further order of this Court the operation and execution or carrying out by defendant steamship lines and Conferences any attempt to employ "contract" and "non-contract" rates, pursuant to the authority purportedly granted to them by Commission Order dated January 2, 1948, approving Conference Agreement No. 4490-6, Commission Approval dated August 24, 1948, approving Conference Agreement 7920-1, and Board order dated December 1, 1950, dismissing plaintiff's complaint.

(c) That pending a hearing upon the aforesaid application for a preliminary or interlocutory injunction, a tem-

porary restraining order be issued, in terms restraining, enjoining, and suspending the operation and execution of so much of the above-described Commission Orders and Approvals as purport to authorize defendants to employ "contract" and "non-contract" rates on and after November 1, 1948, and restraining defendant Conferences and steamship lines from instituting or employing such unlawful contract practices on November 1, 1948, until further order of this Court.

(d) That after final hearing, this Court adjudge, order and decree that so much of the above-described Commission and Board Orders and Approvals as purport to authorize "contract" and "non-contract" rates are, and have at all times been, beyond the lawful authority of the Commission and Board, in violation of the legal rights of the plaintiff, and wholly void and of no force or effect and that such Orders and Approvals be perpetually vacated, set aside, suspended and annulled and the execution thereof perpetually restrained and enjoined.

(e) That the plaintiff have such other and further relief in the premises as equity and justice may dictate.

John J. O'Connor, 29 Broadway, New York, N.Y.
William L. McGovern, Washington, D. C., Attorneys for Plaintiff.

[fol. 13] *Duly sworn to by Mathew S. Crinkley. Jurat omitted in printing.*

[fol. 14] EXHIBIT "A" TO AMENDED COMPLAINT

ORDER

At a session of the United States Maritime Commission, held at its office in Washington, D. C., this second day of January 1948

Approval of Agreements 4490-6 and 7770-1
(Modifications of Conference Agreements)

and

Approval of Agreements 4490-A and 7770-A
(Supplemental Agreements to Conference Agreements)

Whereas, pursuant to Section 15 of the Shipping Act, 1916, as amended, there have been filed for approval an agreement which has been assigned United States Maritime Commission Agreement No. 4490-6 between the member lines of the North Atlantic Continental Freight Conference Agreement No. 7770-1 between the member lines of the North Atlantic French Atlantic Freight Conference, an agreement which has been assigned United States Maritime Commission Agreement No. 4490-A between the member lines of the North Atlantic Continental Freight Conference and the member lines of the Canadian Continental Eastbound Freight Conference, and an agreement which has been assigned United States Maritime Commission Agreement No. 7770-A between the member lines of the North Atlantic French Atlantic Freight Conference and the member lines of the Canadian Continental Eastbound Freight Conference, and

Whereas, agreement 4490-A is subject to Section 15 of the Shipping Act, 1916, as amended, only as to the participation therein of the member lines of the North Atlantic Continental Freight Conference, and agreement 7770-A is subject to Section 15 of the Shipping Act, 1916, as amended, only as to the participation therein of the member lines of the North Atlantic French Atlantic Freight Conference, and

Whereas, examination fails to show any of the above described agreements to be unjustly discriminatory or unfair, detrimental to the commerce of the United States, or

violative of the Shipping Act, 1916, and related acts; now, therefore, by virtue of authority vested in the Commission,

It is ordered, That agreements 4490-6, 7770-1, 4490-A as to the participation therein of the member lines of the North Atlantic Continental Freight Conference, and 7770-A as to the participation therein of the member lines of the North Atlantic French Atlantic Freight Conference be, and the same are hereby, approved, effective as of this date.

(S.) A. J. Williams, Secretary. (Seal.)

By the Commission.

[fol. 15] Copy of U. S. Maritime Commission Agreement No. 4490-6

New York, N. Y.
July 1, 1947.

Inasmuch as certain Steamship Lines heretofore members of the North Atlantic Continental Freight Conference (Agreement No. 4490 approved under Section 15 of the Shipping Act on August 24, 1935, as amended) have withdrawn from said Conference, the remaining members are continuing said Conference as hereby agreed by them to be modified and amended below, to read as follows:

Modify the preamble of said agreement to read, as follows:

"The parties signatory hereto, common carriers by water, hereinafter referred to as members, hereby associate themselves in a Conference to be known as the North Atlantic Continental Freight Conference to promote commerce from North Atlantic ports of the United States in the Portland, Me Hampton Roads range, to ports in Belgium, Holland and Germany (excluding German Baltic) and to this end they hereby agree with each other as follows:"

Insert new paragraph at the end of Article (3) of said agreement to read, as follows:

"This Conference shall endeavor, by consultation with the Canadian Continental Eastbound Freight Conference,

to stabilize rates and in so far as possible, to provide for parity of rates."

Delete paragraph two under Article (6) of said agreement, reading:

"Nevertheless, the members agree to concur in the rate recommendation unanimously made by all of the parties to this Agreement who are members of the Canadian Continental Conference in respect of traffic originating in Canada, and in the rate recommendations unanimously made by all of the parties to this Agreement serving United States ports in respect of traffic originating in the United States, except that where the particular commodity in question is exported in the trade covered by both the Canadian Continental Conference Agreement and this Conference Agreement from both Canada and the United States, all members further agree that the matter shall, to preserve necessary stability, be considered of interest to all members and shall be so dealt with, consistently, however, with the respective interests of the members of the Canadian Continental Conference serving Canadian ports and the members of this Conference serving United States ports respectively as reflected in volume of the particular and related traffic of the respective origins."

Reinstate first paragraph of Article (11) of said agreement as modified and amended below, the operation of which paragraph is presently under suspension pursuant to Agreement No. 4490-4 approved April 4, 1941:

"(11) Unless otherwise specifically agreed membership shall automatically cease when service is abandoned and if notice of abandonment is not given to the Conference, failure to have a sailing in this trade from a United States North Atlantic port for a period of three or more consecutive months shall be regarded as abandonment. Such membership may be retained with approval of the Conference but such member shall have no vote until service is resumed."

Signed and filed by authority of and on behalf of the following parties, comprising the membership of the North Atlantic Continental Freight Conference:

A/S J. Ludwig Mowinckels Rederi (Cosmopolitan Line)
Black Diamond Steamship Corp. (Black Diamond Lines)
Compagnie Generale Transatlantique (French Line)
Compagnie Maritime Belge (Lloyd Royal) S. A.
Cunard White Star Limited
Dampskibsselskabet af 1912 A/S) A. P. Moller,
A/S Dampskibsselskabet Svenborg) Maersk Line
Ellerman's Wilson Line, Limited (Wilson Line)
N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland America Line)
United States Lines Company (United States Lines)
Waterman Steamship Corporation

By (S.) C. R. Andrews, Chairman, North Atlantic Continental Freight Conference.

[fol. 16] Copy of U. S. Maritime Commission Agreement No. 4490, Approved August 24, 1935, As Amended to January 2, 1948.

6

North Atlantic Continental Freight Conference Agreement

Conference Membership as of January 2, 1948

A/S J. Ludwig Mowinckels Rederi (Cosmopolitan Line)
Black Diamond Steamship Corporation
Compagnie Generale Transatlantique
Compagnie Maritime Belge (Lloyd Royal) S. A.
Cunard White Star Limited
Ellerman's Wilson Line, Ltd. (Wilson Line)
Dampskibsselskabet af 1912)
Aktieselskab) A. P. Moller,
Aktieselskabet Dampskibselskabet) Maersk Line
Svenborg)

N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Line)
United States Lines Company (United States Lines)
Waterman Steamship Corporation

C. R. Andrews, Chairman, 80 Broad Street, New York 4, New York.

[fol. 17] North Atlantic Continental Freight Conference Agreement

The Parties signatory hereto, common carriers by water, hereinafter referred to as members, hereby associate themselves in a conference to be known as the North Atlantic Continental Freight Conference to promote commerce from North Atlantic ports of the United States in the Portland, Me. Hampton Roads range, to ports in Belgium, Holland and Germany (excluding German Baltic) and to this end they hereby agree with each other as follows:

(1) This agreement covers the establishment and maintenance of agreed rates, charges and practices, for or in connection with the transportation of all cargo, except as may be otherwise provided in this agreement, in vessels owned, controlled, chartered or operated by the members in the trade covered by this agreement. No party hereto shall represent directly or indirectly, any vessel in this trade other than in accordance with this agreement.

(2) All freights and other charges for or in connection with such transportation shall be quoted, charged and collected by the members, in the currency specified in the tariff of the Conference or in its equivalent in other currency at the rate of exchange as of the date such rates and other charges become due and payable, strictly in accordance with rates, charges, classifications, rules and regulations adopted by the members pursuant to this agreement and no part thereof shall be directly or indirectly, refunded or remitted in any manner or by any device except as may be provided in this agreement.

(3) Conference tariffs, rules and regulations and contract rate lists, supplements thereto and reissues thereof, and minutes of meetings shall constitute a complete record of matters dealt with by the Conference and copies thereof

shall be furnished each member and this agreement and the Conference tariffs, rules and regulations and contract rate lists, supplements thereto and reissues thereof, shall constitute an up to date record of Conference obligations.

The Conference may provide specific contract and non-contract rates in an effort to stabilize rates and permit of forward trading for the common good of the Members and Exporters and the permanent Chairman and or Secretary is hereby empowered to negotiate and execute such contracts as may be authorized by the Conference. Power to negotiate and/or execute contracts on behalf of the Members may also be delegated to a member or group of members as conditions in the opinion of the Conference may warrant. Rates and contract conditions so established shall be made a part of the Conference records aforementioned.

In the emergency of disturbance of rates by non-members which, in the unanimous opinion of either group, as hereinafter provided, warrants greater flexibility of rates the members then operating to Antwerp or Rotterdam as one group, and/or the members then operating to Hamburg or Bremen, as another group, shall by independent and unanimous action of either group, specifically recognize such emergency by declaration to the Conference which shall be recorded in the minutes. Said declaration shall provide just and fair methods by which such competition may be met and said competition may be met pursuant to and within the limits of said declaration. In the event of such declaration by either group any member of the Conference may make such reservation as may, in its opinion, be necessary, consistent with said declaration, to protect its individual interest. Such reservation shall be made a part of the declaration aforementioned.

This Conference shall endeavor, by consultation with the Canadian Continental Eastbound Freight Conference, to stabilize rates and in so far as possible, to provide for parity of rates.

(3A) It is the spirit of this agreement that no member line shall be prejudiced or benefited by currency manipulation or compensation agreements which are preferential to any member line or lines as against any other member

of this Conference, or by devices or unfair methods of any kind affecting prejudicially the traffic which any line or lines party to this agreement would fairly be entitled to secure under ordinary competition.

Preamble as modified by Agreement No. 4490-6 approved January 2, 1948.

Agreement No. 4490-3 approved February 28, 1936, modifying Article 2, cancelled by Department's Order of July 14, 1936.

Article 3 as modified by Agreement No. 4490-1, approved September 17, 1935 and Agreement No. 4490-6, approved January 2, 1948.

Article 3A added by Agreement Number 4490-2 approved January 15, 1936.

[fol. 18] On receipt of complaint from any member line of any of the aforesaid being practiced or indulged in by any other member line (or of which it may be beneficiary), the Chairman or Secretary of the Conference shall immediately call a meeting at which the complaining line(s) shall present all the facts or circumstances relied on by it to support its complaint; the line(s) complained against shall present its defense and the views of the other members shall be obtained.

If as a result of such meeting the difficulty is not adjusted, the Chairman (or Secretary in his absence), unless arbitration is arranged by the complaining line(s) and line(s) complained against or unless other provisions of this agreement are invoked or other method of seeking settlement agreed upon, shall investigate and endeavor to dispose of the complaint to the mutual satisfaction of the parties within fifteen (15) days of the date of such meeting and if unsuccessful shall, failing unanimous agreement to the contrary, declare on behalf of the parties hereto, this Conference Agreement terminated, effective the following business day and all obligations as between the parties hereto in respect of contract rates, tariffs or otherwise under this agreement or adopted pursuant thereto shall likewise terminate.

(4) Regular Conference meetings, unless otherwise agreed on specific occasions, shall be held the first Thursday after the first Wednesday of each month.

(5) Special meetings may be requested by any member giving reason to the Conference office and such meeting shall be arranged if a majority of the membership agree. Due notice incorporating the subject matter of the meeting shall be given all members.

(6) The presence of a majority of the membership at any meeting shall constitute a quorum and the unanimous action of those present or voting by proxy on any matter regularly before the meeting shall be binding on the other members. The members agree to give due consideration to the majority view but unanimous action as aforementioned, except as provided in third paragraph of Article 3 hereof, will be required for the adoption of any measure. Each member shall have one vote and may vote by proxy conferred upon any other member provided notification of such proxy is given to the Chairman or Secretary at or prior to the time of recording attendance at the meeting. Rate changes unless otherwise specifically agreed shall not be effective until the business morning following the day of the meeting and shall not be announced to the trade before they become effective but this shall not prevent the sending of night letters after five o'clock P.M., Eastern Standard Time, on the evening prior to the date on which the rates become effective.

(7) The Conference office shall provide a Chairman and Secretary who shall have authority to carry out the decisions of the Conference and shall be furnished such pertinent records of the members as required in the enforcement of this agreement and decision of the Conference. In the absence of the Chairman at any meeting a Chairman shall be selected for the conduct of the meeting by the members present. The Conference office shall compile cargo statistics and data relating to rate applications, issue dockets for meetings, keep a record of proceedings and issue minutes, tariffs and contract lists and investigate complaints, misclassifications, etc., relating to this agreement and perform such other duties consistent with this agreement as may be delegated to them.

(8) The expense of annual Conference maintenance unless otherwise provided shall be determined by executive

committee of the Trans-Atlantic Steamship Conferences and such bills shall be promptly met.

(9) Any common carrier by water as defined in Section 1 of the Shipping Act, 1916, as amended, who has been regularly engaged as such common carrier in the trade covered by this Agreement, or who furnishes evidence of ability and intention in good faith to institute and maintain a regular service between the ports within the scope of this Agreement, may hereafter become a party to this Agreement by agreeing to conform to this Agreement and such rules and regulations as are adopted by the Conference pursuant thereto, and such admission shall not be denied by the Member Lines of the Conference, except for just and reasonable cause.

Article 6 as modified by Agreement No. 4490-6, approved January 2, 1948.

Article 9 as modified by Agreement No. 4490-5, approved July 2, 1946.

[fol. 19] Application shall be made to the Conference office in writing outlining the corporate and trade name of the line, the service contemplated and such other information as the Conference may require. Copy of application shall be sent to all members and shall be considered at the next meeting following receipt.

(10) Any member may withdraw from the Conference effective not less than fifteen days after giving notice to the Conference office, which shall promptly advise the other members.

The other members may within ten days of receipt of such notice have the option of withdrawing by the same procedure but effective on the same date as the withdrawal notice filed within the ten preceding days or the members may, at any time, by unanimous consent declare the Conference disbanded.

*(11) Unless otherwise specifically agreed membership shall automatically cease when service is abandoned and

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* First paragraph of Article (11) suspended by Agreement No. 4490-4, approved April 4, 1941, reinstated and modified by Agreement No. 4490-6, approved January 2, 1948.

if notice of abandonment is not given to the Conference, failure to have a sailing in this trade from a United States North Atlantic port for a period of three or more consecutive months shall be regarded as abandonment. Such membership may be retained with approval of the Conference but such member shall have no vote until service is resumed.

Any member may be expelled for just and reasonable cause by unanimous action of the other members; Provided, however, that any line owned and or controlled by the same interests owning or controlling the line or lines complained against shall have no vote thereon.

(12) This Agreement shall supersede and cancel Conference Agreement #48.

American Diamond Lines, Inc., (Black Diamond Lines), (S.) F. E. Huck, V. P. Baltimore Mail Steamship Company, (Baltimore Mail Line), (S.) John M. Franklin, V. P. Canadian Pacific Steamships, Ltd., (S.) W. M. Kirkpatrick, Foreign Freight Traffic Manager. Compagnie Maritime Belge (Lloyd Royal) S. A., J. A. Nash & Co., General Agents (S). J. A. Nash. Ellerman's Wilson Line, Limited, (Ellerman's Wilson Line), By: Ellerman's Wilson Line New York Incorporated, (S.) J. H. Neale, President. Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft, (Hamburg-American Line), (S.) C. J. Beck, Man. Dir. N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland America Line), (S.) P. van den Toorn, Manager; Inter-Continental Transport Services, Ltd., (County Line), (S.) L. A. W. Doharty, President. Norddeutscher Lloyd (North German Lloyd) (S.) C. J. Beck, Man. Dir. United States Lines Co. (United States Lines), (S.) F. A. Ryan, Gen. Frt. Mgr. United States Shipping Board Merchant Fleet Corporation, For the Yankee Line, By: Southgate Nelson Corporation, Managing Operators. (S.) W. F. Taylor, Pres.

Article 11 modified by Agreement No. 4490-1 approved September 17, 1935.

[fol. 20]

Copy of
U. S. Maritime Commission
Agreement No. 4490-A
Approved Jan. 2, 1948

This Memorandum of Agreement made July 1, 1947, between Canadian Continental Eastbound Freight Conference (Bordeaux/Hamburg range) and North Atlantic Continental Freight Conference (Antwerp/Hamburg range),

Witnesseth:

The undernoted member steamship lines of the above named two Conferences deem it to be in the public interest and to the best interests of shippers, carriers, and all others concerned in the steamship trade and in commerce that stability of ocean rates and parity of the same should be achieved and maintained so far as practicable on shipments from Canada and shipments from the United States so that the respective shippers thereof may all operate on fair and equal terms in the markets embraced in the services covered by the aforesaid two Conferences.

For accomplishment of this purpose, which necessarily includes various relevant incidental matters of general interest, the undernoted steamship lines, members of the aforesaid respective Conferences, hereby agree to establish and maintain a joint rate committee of such membership from their own organizations as they shall name from time to time. Said committee shall hold meetings from time to time and at such places as may be convenient, and shall consider all requests which may be made by or on behalf of shippers or carriers for changes in rates and shall deal with other relevant and incidental matters, and in due course as a committee make their resulting recommendations to each of the above named Conferences for decision thereon by said Conferences, pending which decision and announcement thereof no recommendation of said committee shall become effective.

The Secretary of Canadian Continental Eastbound Freight Conference and the Chairman of North Atlantic Continental Freight Conference are the persons through whom information will be communicated from one of the

aforesaid Conferences to the other concerning the matters covered by this agreement.

This agreement shall remain in effect until and including December 31, 1947, and shall continue in effect thereafter subject to the right of either of the aforesaid Conferences, acting by its entire membership, to terminate this agreement by giving the other Conference written notice of termination to be effective 90 days from the date of delivery of said notice.

Any other carrier at any time becoming a member of either of the aforesaid two Conferences shall thereupon and automatically become a party to this agreement. The withdrawal of any carrier from membership in either of the aforesaid two Conferences will automatically terminate such carrier's participation in this agreement, provided, however, that when membership is held in both of the aforesaid Conferences, participation in this agreement shall continue so long as membership is retained in either of said Conferences.

IN WITNESS WHEREOF the undernoted lines, members of each of the aforesaid Conferences, have caused this agreement to be executed by their respective agents hereunto duly authorized at the place and on the date above indicated.

For and on behalf of Canadian Continental Eastbound Freight Conference: Canadian Shipowners Ltd., Montship Lines Ltd., Canada Continental Line; Compagnie Generale Transatlantique (French Line), County Line Ltd. (County Line), Watts Watts & Co. Ltd. (Watts Watts Line), by (Sgd.) W. C. Sproule, Secretary, Montreal, Canada.

[fol. 21] For and on behalf of North Atlantic Continental Freight Conference: A/S Ludwig Mowinckels Rederi (Cosmopolitan Line), Black Diamond Steamship Corp. (Black Diamond Lines), Compagnie Generale Transatlantique (French Line), Compagnie Maritime Belge (Lloyd Royal) S. A., Cunard White Star Limited, Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svendborg, A. P. Moller, Maersk Line; Ellerman's Wilson Line, Limited (Wilson Line), N. V. Nederlandsch-

Amerikaansche Stoomvaart-Maatschappij (Holland-America Line), United States Lines Company (United States Lines), Waterman Steamship Corporation, by (Sgd.) C. R. Andrews, Chairman, New York, N. Y.

[fol. 22] EXHIBIT "B" TO AMENDED COMPLAINT

Copy of
U. S. Martitime Commission
Agreement No. 7000

Approved: February 16, 1940
As Amended to May 7, 1948

5

Continental North Atlantic Westbound Freight Conference **

Conference Membership as of September 24, 1948

A/S J. Ludwig Mowinckels Rederi (Cosmopolitan Line)
Black Diamond Steamship Corporation
Compagnie Generale Transatlantique (French Line)
Compagnie Maritime Belge (Lloyd Royal) S.A.
Lykes Bros. Steamship Co., Inc.
N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (including Red Star Line Service)
South Atlantic Steamship Line, Inc.
United States Lines Company
Waterman Steamship Corporation

E. R. Humphries, Secretary, 128 Ananasstraat, The Hague, Holland.

** Formerly known as the Antwerp Rotterdam North Atlantic Westbound Freight Conference. Name changed by No. 7000-2 approved January 3, 1946.

[fol. 23] *Continental North Atlantic Westbound Freight Conference*

The parties hereto, common carriers by water, hereinafter referred to as members, hereby associate themselves in a Conference to be known as the "Continental North Atlantic Westbound Freight Conference" for the purpose of establishing and maintaining agreed rates and charges, and practices pertaining to the application thereof, for or in connection with the transportation of cargo from or via the ports of Germany, Belgium and the Netherlands in the range between Hamburg and boundary line of Belgium and France to United States North Atlantic Ports in the Hampton Roads/Portland range for the common good of the members and shippers, provided, however, the provisions of this agreement shall not apply to cargo within the scope of the Swiss/North Atlantic Freight Conference.

1. This agreement shall apply to all vessels engaged in this trade which are owned, controlled, chartered, managed or operated by the members and no member shall represent, directly or indirectly, any vessel in this trade other than in accordance with this agreement.

2. All freights and other charges shall be quoted, charged and collected by the members in the currency specified in the tariffs of the Conference, or its equivalent, strictly in accordance with the tariffs and rules and regulations adopted by the members pursuant to this agreement and no part thereof shall be refunded or remitted, directly or indirectly, in any manner or by any device except as may be provided pursuant hereto and not in contravention of applicable statutes.

3. Conference tariffs, supplements thereto and reissues thereof and minutes of meetings shall constitute a complete record of matters dealt with by the Conference. Copies thereof shall be furnished each member and Governmental Administrative Office whose approval of this agreement is required.

4. Unanimous consent of the members is required for the adoption of any measure hereunder.

5. The expense of maintenance of the Conference shall be borne by the members on the basis of one part for each Continental port served.

6. Any member may withdraw from the Conference effective not less than fourteen days after giving written notice to the other members.

7. Any common carrier by water as defined in Section 1 of the Shipping Act, 1916, as amended, who has been regularly engaged as such common carrier in the trade covered by this Agreement, or who furnishes evidence of ability and intention in good faith to institute and maintain a regular service between the ports within the scope of this Agreement, may hereafter become a party to this Agreement by agreeing to conform to this Agreement and such rules and regulations as are adopted by the Conference pursuant thereto, and such admission shall not be denied by the Member Lines of the Conference except for just and reasonable cause.

Application shall be made to the Conference office in writing outlining the corporate and trade name of the line, the service contemplated and such other pertinent information as the Conference may require.

8. No change in the membership of this Conference shall become effective until advice thereof has been addressed to the Governmental Agency charged with the Administration of Section 15 of the United States Shipping Act, 1916.

9. Unless otherwise specifically agreed membership shall automatically cease when service is abandoned and if notice of abandonment is not given to the Conference, failure to have a sailing in this trade from a Continental port within the scope of this Agreement for a period of three or more

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Preamble as modified by Agreements 7000-1, approved February 16, 1940, 7000-2, approved January 3, 1946, and 7000-3, approved February 11, 1947.

Article 7 as recorded in Agreement No. 7000-1 and approved by Order dated February 16, 1940, as modified by Agreement 7000-3, approved February 11, 1947.

Article 8 added by Agreement No. 7000-2, approved January 3, 1946.

Article 9 added by Agreement No. 7000-4, approved May 14, 1947, as modified by the order approving agreement 7000-4.

[fol. 24] consecutive months shall be regarded as abandonment. Such membership may be retained with approval of the Conference but such member shall have no vote until service is resumed. Notice of all changes in voting status of member lines pursuant to this article shall be furnished promptly to the governmental agency charged with the administration of Section 15 of the Shipping Act, 1916, as amended.

10. Any new member shall, at the time of admission, deposit with the Conference Office the sum of Five Hundred ($500.00) dollars, as an admission fee, no part of which shall be returnable to said member.

* American Diamond Lines, Inc., Black Diamond Steamship Corp., General Agents. By (Sgd.) J. J. Morton, Vice President.

Compagnie Maritime Belge (Lloyd Royal) S.A., J. A. Nash & Co., General Agents. By (Sgd.) J. A. Nash.

N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (including its Red Star Line Service). By (Sgd.) P. Van Den Toorn, General Manager.

Signatures affixed in New York, Oct. 7, 1939. Agreement in Rotterdam, Holland, Sept. 20, 1939.

[fol. 25] Copy of

U. S. Maritime Commission Agreement No. 7000-5

Filed: August 20, 1947

Approved May 7, 1948

The Hague,
August 11, 1947.

The member lines of the Continental North Atlantic Westbound Freight Conference hereby agree to the following modification of the Agreement of that Conference,

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Article 10 added by Agreement No. 7000-5, approved May 7, 1948.

* Black Diamond Lines, Inc., rather than American Diamond Lines, Inc., recorded as a party by Order dated February 16, 1940.

approved under Section 15 of the Shipping Act on February 16, 1940, as Agreement No. 7000, as amended:

Insert after Article 9 of said Agreement new Article 10 to read as follows:

"10. Any new member shall, at the time of admission, deposit with the Conference Office the sum of Five Hundred ($500.00) dollars, as an admission fee, no part of which shall be returnable to said member."

Signed and filed by authority of and on behalf of the following parties, comprising the membership of the Continental North Atlantic Westbound Freight Conference:

Black Diamond Steamship Corporation
Compagnie Generale Transatlantique (French Line)
Compagnie Maritime Belge (Lloyd Royal) S.A.
Lykes Bros. Steamship Company Inc.
N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland America Line including its Red Star Line Service)
United States Lines Company (United States Lines)
Waterman Steamship Corporation

By (S.) C. R. Andrews, Chairman, Trans-Atlantic Associated Freight Conferences, 80 Broad Street, New York 4, N. Y.

[fol. 26] EXHIBIT "C" TO AMENDED COMPLAINT

Copy of

U. S. Maritime Commission

Agreement No. 7920-1

The common carriers by water, members of the French North Atlantic Westbound Freight Conference and members of the Continental North Atlantic Westbound Freight Conference, hereby agree and, pursuant to the requirements of Section 15 of the U.S. Shipping Act, 1916, as amended, hereby file with the United States Maritime Commission for approval, the following modifications to Agreement

7920, as approved by the U.S. Maritime Commission on July 1st 1947, between the members of said Conferences:

1—Amend Article 1 to read:

"If cargo of Belgian or Dutch origin is tendered at French Ports to the Lines of the French Group, they agree to assess the rates, (contract rates if established and Merchant holding contract) of the Continental North Atlantic Westbound Freight Conference or the rates, (contract rates if established and Merchant holding contract) of the French/North Atlantic Westbound Freight Conference, whichever may be the higher."

2—Amend Article 2 to read:

"If cargo of French origin is tendered at Belgian or Dutch Ports to the Lines of the Hamburg/Rotterdam/Antwerp Group, they agree to assess the rates, (contract rates if established and Merchant holding contract) of the French/North Atlantic Westbound Freight Conference or the rates, (contract rates if established and Merchant holding contract) of the Continental/North Atlantic Westbound Freight Conference, whichever may be the higher."

3—Amend Article 4 to read:

"The respective Groups assure each other they will not construe it as a breach of contract if shipments by their Contractors are made by vessels of the other Group and that specific requests from Contractors will be answered accordingly.

To provide for application of proper rates on shipments moving under the provisions of Article 3, each Group shall promptly answer requests of members of the other Group for information in respect of shippers or consignees using the vessels of said other Group on such Through Traffic."

4—Amend Article 7 to read:

"This Agreement shall remain in effect until December 31st 1948. It shall be continued thereafter from year

to year unless cancelled by written notice, given by either Group or any one of the Parties, on/or before October 1st, 1948, of any subsequent year, such notice to be effective as of the next succeeding 31st of December."

The above amendments have been found desirable in view of the contemplated application by the Continental North Atlantic Westbound Freight Conference of a contract rate system.

Filed by authority of and on behalf of the following carriers, comprising the membership of the French/North Atlantic Westbound Freight Conference:

Compagnie Generale Transatlantique.
Cosmopolitan Line—A/S. J. Ludwig Mowinckels Rederi.
United States Lines Company.

Paris, June 30th 1948.

By (S.) M. Lambert, Secretary French/North Atlantic Westbound Freight Conference.

[fol. 27] Filed by authority and on behalf of:

Continental North Atlantic Westbound Freight Conference:

Black Diamond Steamship Corporation.
Compagnie Generale Transatlantique.
Compagnie Maritime Belge (Lloyd Royal) S.A.
Cosmopolitan Line—A/S. J. Ludwig Mowinckels Rederi.
N.V. Nederlandsch-Amerikaansche Stoomvaart—Maatschappij. Holland-Amerika Lijn—(including its Red Star Line Service).
Lykes Bros. Steamship Co. Inc.
South Atlantic Steamship Line Inc.
United States Lines Company.
Waterman Steamship Corporation.

The Hague, June 30th 1948.

By (S.) H. G. Mulder, Secretary.

[fol. 28]

Copy of

U. S. Maritime Commission

Agreement No. 7920

Filed: February 6, 1947

Approved: July 1, 1947

Agreement Between the Lines of the Continental North Atlantic Westbound Freight Conference and the Lines of the French North Atlantic Westbound Freight Conference.

Whereas, The Members of the Continental North Atlantic Westbound Freight Conference, operating from the Hamburg/Rotterdam/Antwerp Range, hereinafter called the Hamburg/Rotterdam/Antwerp Group, and the Member Lines of the French North Atlantic Westbound Freight Conference, hereinafter called the French Group, operate regular services from European Ports between Hamburg and Bayonne, both inclusive, to United States North Atlantic Ports between Portland (Maine) and Hampton Roads, both inclusive.

And Whereas, They desire to establish fair and equitable rates and practices to prevent unjust discrimination between shippers and ports, and otherwise stabilize conditions for the benefit of shippers and carriers alike.

Now, Therefore, the Parties hereto, in consideration of the premises and the covenants hereinafter contained, hereby agree each with the others as follows:

1. If cargo of Belgian or Dutch origin is tendered at French Ports to the Lines of the French Group, they agree to assess the rates of the C.N.A.W.F.C. or the rates of the F.N.A.W.F.C., whichever may be the higher.

2. If cargo of French origin is tendered at Belgian or Dutch Ports to the Lines of the Hamburg/Rotterdam/Antwerp Group, they agree to assess the rates of the F.N.A.W.F.C. or the rates of the C.N.A.W.F.C., whichever may be the higher.

3. To facilitate matters, the Groups may agree, from time to time, on common Through Rates on specific items and

points of origin, and such agreed Through Rates shall be published by each Group in special Through Rate Tariff.

4. To provide for application of proper rates on shipments moving under the provisions of Art. 3, each Group shall promptly answer requests of Members of the other Group for information in respect of shippers or consignees using the vessels of said other Group on such Through Traffic.

5. In the event of competition from French Ports by vessels not operated by parties to this Agreement, which proves from time to time particularly prejudicial to the Hamburg/Rotterdam/Antwerp Group, favourable consideration will be given by the French Group to application of the Hamburg/Rofterdam/Antwerp Group for the establishment of competitive rates.

6. The admission of any carrier not named herein, operating service within the scope of this Agreement, to membership in either Conference, shall automatically make such Line a party to this Agreement as a Member of the Group within which its operations fall, it being understood that membership of any one Line having served notice is automatically cancelled in this Joint Agreement, effective as of the date of termination from either the French or the Continental Conferences.

[fol. 29] 7. This Agreement shall remain in effect until December 31st 1947. It shall be continued thereafter from year to year, unless cancelled by written notice, given by either Group, on or before October 1st 1947 or on or before October 1st of any subsequent year, such notice to be effective as of the next succeeding 31st of December.

In Witness Thereof the Parties hereto have signed this Agreement this 20th day of December 1946:

Black Diamond Steamship Corporation: "Asabel" Soc. An. (American Shipping Agency Belgium) (S.) J. Van der Linden, Directeur. "Asabel" S.A. as General Agents for Belgium: p.p. Van Nievelt, Goudriaan & Co., as General Agents for Holland: (S.) W. Kruyne. Compagnie Generale Transatlantique: (S.) M. Olive. Compagnie Mari-

time Belge (Lloyd Royal) S.A. par Delegation Speciale Agence Maritime Internationale S.A.: (S.) G. J. Peeters, Fonde de Pouvoirs. J. Bernaerts, Directeur. n.v. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij. Holland Amerika Lijn (Including the Red Star Line Service). (S.) A. de Waard. Lykes Bros. Steamship Co., Inc.: (S.) A. J. Tyler, Director for Continental Services. United States Lines Company: (S.) W. J. Weigele, Ass't. European General Manager; Waterman Steamship Corporation: Runciman (Belgium) S.A. as Agents: (S.) L. Van Herck, Directeur.

[fol. 30] EXHIBIT "D" TO AMENDED COMPLAINT

North Atlantic Baltic Freight Conference
North Atlantic Continental Freight Conference
North Atlantic French Atlantic Freight Conference
North Atlantic U. K. Freight Conference

80 Broad Street
New York 4, N. Y.

Telephone Whitehall 4-0990 — Cable Tranconfer

October 1, 1948

To Merchant Shippers:

Gentlemen:

Enclosed please find, for your prompt acceptance, offer of contracts for the period November 1, 1948 to December 31, 1949.

It is important that advice of acceptance of these contracts is in the hands of the Carriers promptly. This will avoid application of the higher non-contract rates of the Carriers tariff and to accomplish this we therefore urge that you sign and return the enclosed forms to us by return mail. *Please sign and return all copies and do not remove any classifications that may be attached.* We will promptly execute and return one complete copy of each contract for your files.

If you have ceased exporting to the ports covered by these contracts or do not desire to sign them kindly return the forms to us with your advices so as to clear our records.

If the name of firm or address appearing in the contract is not correct, please correct same before returning the forms.

Very truly yours, (S.) C. R. Andrews, Chairman.

[fol. 31] North Atlantic Continental Freight Conference
80 Broad Street, New York 4, N. Y.

The Canadian Continental Eastbound Freight Conference
315 St. Sacrement Street, Montreal 1, Canada

Memorandum of Agreement, made this — day of —, 19— between — —, hereinafter called the Merchant ("Merchant" includes subsidiaries, affiliates and agents of any of them), and the several Steamship Lines named below members of the North Atlantic Continental Freight Conference and The Canadian Continental Eastbound Freight Conference, hereinafter called the Carriers. It is understood and agreed that if any additional Line or Lines become members of the North Atlantic Continental Freight Conference or The Canadian Continental Eastbound Freight Conference, respectively, such Line or Lines shall thereby and thereupon become parties to this agreement as Carriers, and the Merchant shall have the right to ship on such Line or Lines to the same extent as on the other Carriers and should any Line or Lines cease to be Members of said Conferences, they shall simultaneously cease to be Carriers hereunder and this agreement shall thereupon terminate and expire as between the Merchant and such Line or Lines, but shall continue in full force and effect according to its terms as between the Merchant and the Lines still remaining Members of said Conferences.

1. In consideration of the rates and other conditions stated herein, the Merchant agrees to offer or cause to be offered to the Carriers for transportation by them to Belgium, Germany and Holland and discharge at such ports of said countries served by the Carriers as may be designated by the Merchant, all shipments of the commodities mentioned (or provided) below.

2. This contract covers all export shipments of the Merchant of the herein named (or provided for) commodities moving out of United States North Atlantic and Canadian ports to or through ports of the aforesaid countries, and all said shipments shall be tendered to the Carriers for their vessels which may load at the ports of Norfolk, Newport News, Baltimore, Philadelphia, New York, Boston, Portland and Canadian ports Montreal and East thereof and scheduled to sail to the port of destination designated by the Merchant, and failure so to tender any such shipments to the Carriers or shipment of them by vessels other than those of the Carriers shall be a violation of this contract. The Carriers agree, subject to provisions hereof, to transport said shipments on their vessels sailing to the aforesaid countries.

3. The Merchant has the option of selecting any of the vessels operated by the respective Carriers to the countries herein mentioned subject to agreement with the particular Carrier as to the quantity, but it is the spirit of this agreement that the Merchant, so far as convenient to him, will distribute shipments equitably between the several Carriers. The Merchant agrees to make application for space as early as practicable before the vessel's advertised sailing date. If the Carriers fail to name space within three business days after the Merchant duly applies therefor, on a vessel scheduled to sail from the port of shipment selected within fifteen days after the seaboard clearance date desired, the Merchant shall be free with respect to such shipment to secure space elsewhere without prejudice to his right to future shipment under this agreement but before making such arrangement the Merchant shall first give the office of the Conference an opportunity to arrange space.

4. The Carriers severally agree to furnish the Merchant at the rate or rates named or provided for herein space in such vessels as they may respectively load at said loading ports for transportation and discharge at the ports desired, provided that suitable unbooked space is available therein when the Merchant makes application. If the Merchant shall make shipment hereunder for the benefit of some party not holding or conforming to a similar agreement, or shall

make shipment in violation hereof, then the Carriers shall have the option at any time to declare this agreement terminated, and the Merchant shall be liable to the Carriers for liquidated damages equal to twice the amount of freight that would have been payable under this contract in respect of the shipment constituting the violation. The Merchant [fol. 32] agrees to furnish to the Carriers, through the office of the Conference, full information concerning propriety of any shipment made or not made by the Merchant under the agreement and failure to furnish such information promptly after request shall entitle the Carriers to cancel this agreement on ten days' written notice.

5. The commodities and the rates thereon to which this agreement applies are:

As per Reverse Side or Attached

Other commodities as may be shipped by the Merchant from time to time, which shall be deemed covered by this agreement, at the lowest rates then in effect for the particular commodity.

The minimum charge on any one bill of lading or per package shall conform to the Carriers' charges in connection with the particular commodity in effect at time of shipment.

Unless otherwise specifically stated herein packages or pieces exceeding 4480 pounds or 30 feet in length will take the additional Heavy Lift Charges and Extra Length Charges in effect at time shipments are made.

Rates quoted herein are in United States currency on shipments originating in United States moving either through United States Ports or through Canadian Ports, and are in Canadian currency on shipments originating in Canada, moving either through Canadian Ports or through United States Ports.

The rates herein specified are subject to be increased reasonably from time to time. Any notice of increase shall be deemed accepted by the Merchant unless within 20 days after his receipt of the notice of increase he gives the Carriers written notice of non-acceptance. In event of such non-acceptance the Carriers shall have the option at any time within 20 days after receipt of the Merchant's notice

to cancel this agreement on giving the Merchant at least 60 days written notice, but if such notice is not given this agreement shall remain in effect.

The Carriers have the option to reduce their rates, and should they during the term of this agreement reduce their rates on the commodities herein named (or provided for) below the rates herein agreed, the Merchant, under like conditions, shall be given the full benefit of such reduced rates during the period same remain in effect.

6. Shipments are subject to all the provisions of the permit dock receipt, and bill of lading in use by the Carrier when shipment is tendered. If valuation higher than that provided by the regular form of bill of lading is desired by the Merchant it must be declared before shipment and, in accordance with tariff provisions, a higher rate paid than stated in this agreement.

7. In case of dispute under this agreement the Merchant and Carrier(s) each agree to submit the matter to arbitration at New York, or Montreal if the Merchant is domiciled in Canada, each appointing an arbitrator and the two so chosen shall select an umpire to which arbitration committee all data requested in connection with the matter in dispute shall be made available. Decision of two or more members of said Committee shall be binding on the parties.

8. This agreement shall cover shipments as above specified on vessels scheduled to sail from port at which shipment is loaded during the period from November 1, 1948, to December 31, 1949, both dates inclusive and shall continue in effect on the same terms and conditions throughout consecutive subsequent years, subject to the right of either the Merchant or the Carriers to terminate the same as of December 31 in any year by giving the other party ninety days written notice of termination.

[fol. 33] 9. In the event of the imminence or existence of war, hostilities or warlike operations between any Nations, blockades, embargoes, regulations of any government authority, or any official interference with commercial intercourse, affecting the operations of the Carriers, or any of them in the trade covered by this agreement, the Carriers or any one or more of them shall at their option have the right to cancel this agreement.

Members of:

North Atlantic Continental Freight Conference operating services from United States North Atlantic Ports:

A/S J. Ludwig Mowinckels Rederi (Cosmopolitan Line);
Black Diamond Steamship Corp. (Black Diamond Lines);
Compagnie Generale Transatlantique (French Line);
Compagnie Maritime Belge (Lloyd Royal) S. A.;
Cunard White Star Limited;
Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svendborg, A. P. Moller, Maersk Line;
Ellerman's Wilson Line, Limited (Wilson Line);
N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland America Line);
South Atlantic Steamship Line, Inc.;
United States Lines Company (United States Lines);
Waterman Steamship Corporation.

The Canadian Continental Eastbound Freight Conference operating services from Canadian Ports Montreal and east thereof:

Canadian Shipowners Ltd., Montship Lines Ltd., (Canada Continental Line);
Canadian Pacific Steamships Limited;
Compagnie Generale Transatlantique (French Line);
County Line Ltd. (County Line);
Cunard White Star Limited (Cunard White Star Line);
N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn" (Holland America Line);
Swedish American Line Continental Service (Swedish American Line);
Watts & Co. Ltd. (Watts Watts Line).

_____

(Signature of Merchant)

_____

(Signature for and on behalf of the above mentioned Steamship Lines)

Please return to North Atlantic Continental Freight Conference, 80 Broad Street, New York 4, N. Y.

[fol. 34] EXHIBIT "E" TO AMENDED COMPLAINT

(Translation from Dutch)

To Exporters and Forwarding-Agents
in the North Atlantic Traffic.

Rotterdam, September 28, 1948.
Dear Sirs:

BLACK DIAMOND LINES

Herewith we beg to inform you that the Conference lines in the traffic from Rotterdam, Antwerp, Bremen and Hamburg to New York, Boston, Philadelphia, Baltimore, Norfolk and Newport News have decided to again introduce the *Conference Contract system* (almost in the same shape as same was existing before the last world war).

Up to the present uniform tariffs were applied for all shipments, irrespective of the fact whether shippers exclusively shipped all their parcels by Conference Lines, or that they only made use of the Conference lines if this was convenient to them and also of the sailings of the so-called outsiders. In this was an injustice, which will be removed by the re-establishment of the Contract system. Moreover the Contract system will still further stimulate the stability of the Conference, by which according to our opinion the trade in general will be served.

It is the intention in the near future to apply the tariff freights now in force as contract freights and to fix tariff freights (non-contract rates), which will be abt. 20% higher.

In order to enable all shippers to quietly deliberate entering into a Conference contract, the Conference lines stipulated that from November 1 the non-contract freights will apply for those shipments for which the respective shippers did not yet sign the Conference Contract. Up to that date the present freights will be charged irrespective of shippers having already signed the Conference Contract, or not.

The Conference Lines, when closing contracts, do not wish to interfere with the eventually existing cooperation between shippers and their forwarding agents and, if required, the names of the forwarding agents can be mentioned in the contracts which on behalf of the Conference

Lines will be offered and signed by the Conference Secretary at The Hague.

The Conference Secretary has to send out all contracts, for the shipments from Rotterdam as well as from Antwerp, Bremen and Hamburg, which naturally is giving a great deal of work. Therefore, the distribution of the contract forms is taking place gradually, so that at the present moment some shippers will already have received the contract forms, whereas others may expect same within short.

In any case we shall greatly appreciate if you will give this matter your special attention and we trust that shippers in general will support the aim of the Conference as to further stability of the routes of the Conference Lines and will return the contract forms to the Conference Secretary within the fixed time, either direct or through their forwarding agents.

Yours faithfully, Van Nievelt, Goudriaan & Co.
(S.) —— (Agents for Black Diamond).

[fol. 35] APPENDIX "A" TO AMENDED COMPLAINT

Shipping Act 1916, as Amended, Title 46, U. S. C.

§ 812. Rebates and discriminations by carriers by water prohibited; use of "fighting ship."

No common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country—

First. Pay or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow a deferred rebate to any shipper. The term "deferred rebate" in this chapter means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only

if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this chapter means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accomodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition, or (c) [fol. 36] the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by fine of not more than $25,000 for each offense. Sept. 7, 1916, c. 541, § 14, 39 Stat. 733; June 5, 1920, § 20, 41 Stat. 996.

§ 814. Contracts between carriers filed with commission

Every common carrier by water, or other person subject to this chapter, shall file immediately with the commission a true copy, or, if oral, a true and complete memorandum, of every agreement, with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and char-

acter of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The commission may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors or to operate to the detriment of the commerce of the United States, or to be in violation of this chapter, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the commission shall be lawful until disapproved by the commission. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the commission. [fols. 37-38] All agreements, modifications, or cancellations made after the organization of the commission shall be lawful only when and as long as approved by the commission, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of section 1-11 and 15 of Title 15, and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of $1,000 for each day such violation continues, to be recovered by the United States in a civil action. Sept. 7, 1916, c. 541, § 15, 39 Stat. 733; Ex. Ord. No. 6166, § 12, June 10, 1922; June 29, 1936, c. 858, §§ 204, 904, 49 Stat. 1987, 2016.

[fols. 39-40] In United States District Court

Intervention of the United States Maritime Commission —November 3, 1948

In accordance with the provisions of 28 U.S.C., Section 2323, we hereby enter the appearance of the United States Maritime Commission as a party defendant in the above entitled action, and of ourselves as its counsel. (S) Paul D. Page, Jr., Solicitor; George F. Galland.

Washington, D. C.

[fol. 41] Certificate of service (omitted in printing).

[fol. 42] In United States District Court

Answer to Amended Complaint and Motion to Dismiss— December 15, 1950

Defendant carriers answer the amended complaint herein as follows:

1. They admit the allegations of the first paragraph of the complaint.

2. They deny that portion of the second paragraph of the complaint which reads:

> "Said Commission orders and approvals purport to authorize the defendant steamship lines concertedly to coerce shippers in the North Atlantic trade to patronize defendant steamship lines exclusively and to retaliate against shippers in such trade who patronize plaintiff.";

[fol. 43] they admit the statutory provisions and the orders and approvals of U.S. Maritime Commission and Federal Maritime Board therein mentioned.

3. They admit the allegations of the third paragraph of the complaint.

4. They admit that the several carriers named in the fourth paragraph of the complaint are associated together under the name of North Atlantic Continental Freight Conference, and have an office and place of business at 80

Broad Street, New York 4, New York; except as so admitted they deny the allegations of said fourth paragraph.

5. They admit the association under the name of Continental North Atlantic Westbound Freight Conference of the several carriers named or referred to in the fifth paragraph of the complaint with exceptions as therein stated; except as so admitted they deny the allegations of said fifth paragraph.

6 to 18 Inclusive. They severally admit incorporation as alleged in paragraphs 6 to 18 inclusive of the complaint but deny the correctness of certain allegations therein concerning offices for conduct of business, details of which it is not here material to set forth.

19 to 21 Inclusive. They admit the allegations of the nineteenth, twentieth and twenty-first paragraphs of the complaint.

22. They admit the Maritime Commission's orders approving conference agreements referred to in paragraph twenty-second of the complaint, and except as so admitted they deny each and every allegation of said paragraph. [fol. 44] 23. They admit that in October 1948 notices were issued concerning institution of contract rate system according to copies of such notices attached to the complaint as Exhibits D and E, and they admit maintenance of scheduled sailings by plaintiff in the trade; they deny the allegations concerning unlawfulness and plaintiff's lack of knowledge. Except as so specifically admitted and denied, they deny the allegations of paragraph twenty-third of the complaint.

24. They admit the notices, Exhibits D and E referred to in paragraph twenty-fourth of the complaint, which notices they allege speak for themselves. Except as so admitted they deny the allegations of said paragraph.

25. They deny the allegations of paragraph twenty-fifth of the complaint.

25a. They admit the allegations of paragraph 25a of the complaint except that they deny that plaintiff's action was taken "upon learning of the aforesaid orders" and deny that plaintiff duly prosecuted its complaint before the Commission.

Further answering, defendants allege that in a pre-trial hearing April 5, 1949, before the Maritime Commission,

plaintiff sought unsuccessfully to limit the issues to a purported question of law which this Court had already declined to decide in plaintiff's favor, notwithstanding which and notwithstanding the decision of the Commission against such limitation, plaintiff nevertheless declined to proceed first at the hearing (held at New York, May 9-13, 24-26, 1949) with the factual issues raised by the complaint and answer and left the burden of the procedure and hearing to defendants. Defendants thereupon accepted and undertook [fol. 45] said burden and with less than full co-operation from the side of plaintiff, carried through the subject matter of the controversy, all this in the interest of full, fair and complete investigation and fair determination as contemplated by this Court's order of January 7, 1949. The Federal Maritime Board's Report and Order of December 1, 1950, resulted from the same.

26-29 Inclusive. They deny the allegations of paragraphs 26 to 29 inclusive of the complaint.

30. They deny the allegations of paragraph 30 of the complaint except that they admit that most important shippers cannot rely exclusively upon plaintiff for all their transportation requirements.

31. They deny the allegations of paragraph 31 of the complaint.

For a first, separate and complete defense said defendants allege.

32. The complaint does not state any facts on which any of the relief sought by plaintiff can be granted.

For a second separate and complete defense said defendants allege.

33. On December 1, 1950, the Federal Maritime Board, following and as a result of the adversary proceeding required by this Court's order of January 7, 1949, directed to plaintiff, first exhausting administrative remedies, duly made its order and report, certified copy of which has been duly filed with this Court by which order it was provided as follows:

[fol. 46] "ORDER

At a Session of the Federal Maritime Board, held at its office in Washington, D.C., on the 1st day of December A.D. 1950

No. 684

ISBRANDTSEN COMPANY, INC.

v.

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE, ET AL.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board, on the date hereof, having made and entered of record a report containing its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint herein be, and it is hereby, dismissed.

By the Board.

A. J. Williams, Secretary.

The report of the Federal Maritime Board which said order is made a part thereof provided in Finding 2 on page 17 thereof as follows:

> "2. The provision contained in the eastbound contract permitting termination of the contract and the collection of damages by the conference at the conference's option, is unreasonable and should be eliminated."

Defendants have complied with said determination in the report and have by formal action on December 6, 1950, eliminated from their contract form the option held by said [fols. 47-48] Board to be "unreasonable" and have advised the said Board of said action.

Defendants allege that by the aforesaid report and order of the Federal Maritime Board, December 1, 1950, all matters presented by the original complaint and the amended complaint have been finally determined adversely to plaintiff by said administrative body pursuant to law,

leaving no matter or issue requiring or justifying any further action by this Court in the premises, other than to decline to exercise further jurisdiction or power and to dismiss the complaint with costs.

Wherefore, defendants pray that this Court dismiss the complaint with costs pursuant to defendant's motion made and heard herein December 11, 1950, following notice December 6, 1950, and adjourned for further hearing at 2 P.M., December 20, 1950, and that the Court will grant the defendants such other and further relief as may be just.

Burlingham, Veeder, Clark & Hupper, by Roscoe H. Hupper, Member of the firm, Attorneys for Defendants, Office & P. O. Address: 27 William Street, Borough of Manhattan, City of New York.

December 15, 1950.

[fol. 49] IN UNITED STATES DISTRICT COURT

ANSWER OF THE UNITED STATES OF AMERICA

Comes now the United States of America, by its counsel, and for answer to the amended complaint herein says that the United States confesses error in so much of the orders and approvals of the United States Maritime Commission and its successor the Federal Maritime Board, as purport to authorize the employment of the exclusive patronage dual rate system, said orders and approvals being specifically, (1) the order dated January 2, 1948, which approved Conference Agreement No. 4490-6, (2) the order dated August 24, 1948, which approved Conference Agreement No. 7920-1, and (3) the order dated December 1, 1950, which dismissed plaintiff's complaint challenging the validity of the orders of January 2, 1948, and August 24, 1948.

[fol. 50] Further answering the allegations of the amended complaint, the United States admits, denies, and avers as follows:

I

Answering paragraph 1 of the amended complaint, the United States admits for the purpose of this suit the allegation therein contained.

II

Answering paragraphs 2 and 3 of the amended complaint, the United States admits the jurisdiction of this Court over the parties and the subject matter of this suit.

III

Answering paragraphs 4 through 18 of the amended complaint, the United States admits for the purpose of this suit the corporate status of the parties therein described.

IV

Answering paragraphs 19 through 22 of the amended complaint the United States admits the allegations therein contained.

V

Answering paragraph 23 of the amended complaint, the United States admits the allegations therein contained except that the United States alleges that it is without sufficient knowledge or information to form a belief as to the knowledge of plaintiff in respect to these matters.

VI

Answering paragraph 24 of the amended complaint, the United States admits the allegations therein contained.

VII

Answering paragraph 25 of the amended complaint, the United States admits the allegations therein contained, [fol. 51] except the United States alleges that it is without sufficient knowledge or information to form a belief as to the knowledge of plaintiff in respect to these matters.

VIII

Answering paragraph 25a of the amended complaint, the United States admits the allegations therein contained.

IX

Answering paragraph 26 of the amended complaint, the United States admits the allegation therein contained.

X

Answering paragraphs 27 and 28 of the amended complaint, the United States alleges that Section 15 of the Shipping Act of 1916, as amended, 46 U.S.C. § 814, does not empower the Commission to issue the orders and approvals complained of in so far as they purport to authorize the employment of the exclusive patronage dual rate system. Further answering paragraphs 27 and 28 the United States denies the other allegations therein contained.

XI

Answering paragraph 29 of the amended complaint, the United States denies the allegation therein contained.

XII

Answering paragraph 30 of the amended complaint, the United States admits the allegations therein contained.

XIII

Answering paragraph 31 of the amended complaint the United States admits the allegations therein contained except that the United States alleges that it has not sufficient knowledge or information to form a belief as to the conclusion reached in the last sentence of paragraph 31.

[fol. 52] For further answer to plaintiff's amended complaint, the United States avers that the approval of the employment of the exclusive patronage contract rate system contravenes the specific prohibition in Section 14 of the Shipping Act of 1916, 46 U.S.C. § 812 of retaliation or discrimination against a shipper for patronizing any other carrier.

XV

Except as herein expressly admitted, the United States denies each and every allegation in the complaint contained.

Wherefore, the United States of America prays the Court that a decree be entered enjoining, annulling and setting aside said orders and approvals of the United States Maritime Commission and its successor the Federal Maritime

Board in so far as they purport to authorize the employment of the exclusive patronage dual rate system.

Gareth M. Neville, Frederick R. Hanlon, Trial Attorneys, Department of Justice, Washington, D. C. Wm. Amory Underhill, Acting Assistant Attorney General; James E. Kilday, Albert Boggess, Melville C. Williams, Special Assistants to the Attorney General; Irving H. Saypol, United States Attorney; Attorneys for the United States of America.

[fol. 53] In United States District Court

Stipulation—December 11, 1950

Whereas, the United States Maritime Commission, a defendant herein, was abolished May 23, 1950, by Reorganization Plan 21 of 1950 (15 F. R. 3178); and

Whereas, the Federal Maritime Board was established by said Plan as successor to the Commission with respect to such of the Commission's functions as are involved in this action—

Now, therefore, the undersigned hereby stipulate and agree that this court may enter an order substituting Federal Maritime Board as a defendant in place of the Commission.

Melville Williams, for the United States of America; John J. O'Connor, Attorney for Plaintiff; Burlingham, Veeder, Clark, Hupper, by Roscoe H. Hupper, Attorney for Defendant Carriers; Paul D. Page, Jr., Solicitor, Federal Maritime Board.

New York, New York.

[fols. 54-55] Order of Substitution—December 11, 1950

Upon the annexed stipulation dated December 11, 1950, from which it appears that by Reorganization Plan 21 of 1950, the United States Maritime Commission was abolished and the Federal Maritime Board was established as successor to the Commission, it is hereby

Ordered, that Federal Maritime Board be and it hereby is substituted as a defendant in place of United States Maritime Commission.

(S) Samuel H. Kaufman, U.S.D.J.

New York, New York.

[fol. 56] In United States District Court

Answer of Federal Maritime Board

Federal Maritime Board, for its answer to the amended complaint:

I

Says that it states no facts upon which relief may be granted against it and prays that said complaint be dismissed.

II

For further answer, if further answer be required.

1. Admits the allegations of paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21 and 25(a).

2. Admits the allegations of paragraph 2, except denies that the Commission orders therein described purport to authorize coercion of, or retaliation against, shippers.

3. Admits the allegations of paragraph 22, except denies that the Commission and Board actions therein described are contrary to prohibitions in sections 14 and 15 of the Shipping Act, 1916, or that they are in any respect contrary to law.

4. Admits, as to paragraph 23, that on or about October 1, 1948, some of the defendant conferences and their mem-[fol. 57] bers issued notices in the form of Exhibits D and E annexed to the amended complaint; and denies each and every other allegation of paragraph 23, except alleges that it has no information as to whether Plaintiff knew that the Commission had authorized defendant's use of exclusive patronage contracts.

5. As to paragraph 23, alleges upon information and belief that the notices therein mentioned were intended to be effective in accordance with their terms as set forth in

Exhibits D and E annexed to the amended complaint; and denies each and every other allegation in said paragraph.

6. Denies, as to paragraph 2, that it has knowledge or information sufficient to form a belief with respect to the allegations therein set forth.

7. Denies, each and every allegation in paragraphs 26, 27 and 28.

8. Alleges, as to paragraph 29, upon information and belief, that but for the interlocutory injunction issued against them in this action, defendant conferences and carriers would have tendered exclusive patronage contracts to shippers for execution by them; and denies that it has knowledge or information sufficient to form a belief as to the other allegations set forth in said paragraph.

9. Admits the allegations set forth in paragraph 30, except denies that "the necessary effect of requiring such shippers in the North Atlantic trade to secure all or none of their transportation requirements from member lines of the Conferences, is to compel such shippers completely to cease patronizing Plaintiff; and alleges that the exclusive patronage contract system does not have the necessary effect of compelling shippers to secure all or none of their transportation requirements from conference carriers.

10. Denies, as to paragraph 31, that it has knowledge or information sufficient to form a belief as to the allegations therein set forth.

III

For further answer and by way of affirmative defense says that on or about December 1, 1950, after full and [fol. 58] complete adversary proceedings between the parties hereto other than the Board, the Board issued its report and order, a copy of which is attached hereto, marked Exhibit A and made a part hereof.

Wherefore, Federal Maritime Board requests judgment dismissing the complaint.

Federal Maritime Board, by (S.) Paul D. Page, Jr., Solicitor; (S.) George F. Galland.

[fols. 59-60] EXHIBIT "A" TO ANSWER

FEDERAL MARITIME BOARD

No. 684

ISBRANDTSEN COMPANY, INC.

v.

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE, ET AL.[1]

Submitted October 18, 1950 Decided December 1, 1950

The proposed exclusive patronage contract dual rate system of North Atlantic Continental Freight Conference and of Continental North Atlantic Westbound Freight Conference are not in violation of the Shipping Act, 1916, or in contravention of section 15 thereof.

A provision of a conference contract with the shipper, giving the carrier an option to declare the contract terminated if the shipper violates the contract by shipping via a non-conference vessel, is unjustly discriminatory and should be eliminated from the contract.

Complaint dismissed:

John J. O'Connor and William L. McGovern for complainant.

Roscoe H. Hupper and Burton H. White for respondents.

Joseph E. McDowell for United States Department of Justice, Henry A. Cockrum for United States Department of Agriculture, Hyman I. Malatzky for Himala International, and E. A. McDonald, Jr., and T. R. Stetson for Pacific Coast Borax Co., interveners.

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[1] Continental North Atlantic Westbound Freight Conference, A/S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corporation, Compagnie Generale Transatlantique, Compagnie Maritime Belge, Cunard White Star, Ltd., Ellerman's Wilson Line, Ltd., Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svendborg, United States Lines Company, N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij, Waterman Steamship Corporation, and South Atlantic Steamship Line, Inc.

Paul D. Page, Jr., Solicitor, and George F. Galland for the Board.

Report of the Board

By the Board:

The complainant, hereinafter called "Isbrandtsen," originally brought suit in the District Court of the United States for the Southern District of New York, seeking to restrain the respondents, who constitute, respectively, the eastbound and westbound North Atlantic conferences, from [fol. 61] putting into effect the so-called exclusive patronage contract, hereinafter referred to as the "contract," providing for contract and non-contract rates, hereinafter referred to as the "dual rate system," and seeking to set aside so much of certain orders of the United States Maritime Commission, our predecessor, as purported to authorize the dual rate system. The Commission's orders had been issued from time to time after investigation, but without adversary proceedings, approving the agreements of the two conferences and various amendments thereto, all pursuant to section 15 of the Shipping Act, 1916, hereinafter referred to as the "Act."

The original eastbound conference Agreement No. 4490 provided that the dual rate system might be negotiated with shippers. The original westbound conference Agreement No. 7000 failed to make mention of such system, but by amendment set forth in Agreement No. 7920-1, approved by the Commission, the system was authorized.

It appearing to the District Court that the conference carriers were about to put the dual rate system into effect and thereby require shippers to contract to employ conference carriers exclusively in order to secure tariff rates lower by 20 per cent than those applicable if they failed so to contract, a temporary injunction was issued by the court on January 7, 1949, in order to preserve the *status quo*, on condition that Isbrandtsen should, within 20 days from the entry of the order, prosecute before the Maritime Commission a complaint challenging the validity of the dual rate system.

Thereafter, the present proceeding was instituted by Isbrandtsen, praying that so much of the conference agree-

ments above mentioned as purported to authorize the system be revoked, and that the two conferences cease and desist from putting the system into effect. The Department of Justice, the Department of Agriculture, and certain individuals intervened, and counsel for the Board participated in the proceeding.

[fol. 62] Isbrandtsen and the Department of Justice have made it clear to this Board and to the Maritime Commission, which will hereinafter collectively be referred to as the "Board," that they do not challenge the validity of the conference agreements generally, but only the dual rate system. Specifically, Isbrandtsen claims (1) that the system is illegal, because in violation of section 14 (3) of the Act, hereinafter quoted, and (2) that the Board may not, under section 15 of the Act, legally approve a conference agreement which includes the dual rate system, because that feature is in violation of section 14 (3), and because such approval would be tantamount to delegating to the conference the right to exclude Isbrandtsen from engaging in commerce. The last of the foregoing objections is based on the ground that the Congress has not delegated to the Board and the Board may not redelegate any such power to any conference, and that the threatened exclusion by the conference would deprive Isbrandtsen of its property without due process of law.

When the case came on before the examiner, Isbrandtsen filed copies of the proceedings in the District Court, the conference agreements, the contracts and rates, and thereupon rested, arguing that the dual rate system on its face showed a *prima facie* case of discrimination which was illegal *per se*. The record before us giving the history and actual operation of the system was developed from witnesses produced by respondents. All parties at interest were afforded opportunity to be heard, and after full adversary proceedings, the examiner recommended that the system should be found not to violate section 14 (8) of the Act, and that the contracts as presented should, with minor changes, be approved. With the examiner's recommendations, we generally agree.

Isbrandtsen, an American corporation organized in 1941, succeeded an earlier corporation, organized in 1921, and both have had a history of ocean shipping operation inde-

[fol. 63] pendent from conference ties. Isbrandtsen insists that it should have the right of unobstructed access to American shippers. Its vessels run in competition with conference liners. It claims that the offering of lower rates to shippers who agree to deal exclusively with the conference lines necessarily puts it at a disadvantage, and that the system restrains trade, encourages monopoly, and directly violates section 14 (3) of the Act. Isbrandtsen apparently is not interested in joining any conference. It is important to note that membership in the conferences in question is and has been open to it, and that the Board's predecessors, in passing on conference agreements, have from time to time insisted that any responsible common carrier be accepted to conference membership on reasonable terms. *Pacific Coast European Conference*, 3 U.S.M.C. 11, at p. 14 (1948). So Isbrandtsen's alleged handicap as an independent, competing for cargo in the face of the conference contract system, is a handicap voluntarily assumed and not the result of exclusion.

Before discussing the contracts, some consideration should be given to the conferences. It may be agreed that the conference system tends to monopoly. This system, as above stated, is not here under attack and at this late date could not very well be, for Congress, as is well known, has chosen to approve a policy of regulated monopoly rather than cutthroat competition. Section 15 of the Act recognized carrier agreements

> "fixing or regulating transportation rates * * *; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; * * * or * * * providing for an exclusive, preferential, or cooperative working arrangement."

which under ordinary circumstances might be in restraint of trade, and authorized administrative approval thereof when they met statutory standards. The standards set forth in the same section authorize disapproval when the conference agreements are found to be

> "unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, * * *

> or to operate to the detriment of the commerce of the United States, or to be in violation of this Act."

[fol. 64] The reasons which led to the adoption of this Congressional policy are set forth in full in the Alexander Committee Report, H. R. Doc. 805, 63 Cong., 2nd Sess., which was issued prior to the Shipping Act, 1916, and on which the latter was largely patterned. The Committee recognized that conditions of ocean transportation were such as to permit recurrent rate wars, which disorganized service, impaired its quality, permitted discrimination against small shippers, discouraged "forward trading" by merchants, and ultimately resulted in monopoly through the process of extermination or absorption of the weaker units by the stronger (Report 295-303; 416), and stated, p. 416,

> "It is the view of the Committee that open competition can not be assured for any length of time by ordering existing agreements terminated,"

and further observed, p. 298,

> "the conference system largely results in placing rates outside the influence of competition."

Coming now to the provisions of the contracts, there is little difference between the eastbound and the westbound form. The eastbound contract provides that the shipper ("Merchant") shall ship by the conference lines "all shipments of the commodities mentioned (or provided) below"; that "failure so to tender any such shipments to the carriers, or shipment of them by vessels other than those of the carriers shall be a violation of this contract"; that the carriers agree to transport the shipments on their vessels; that if the carriers fail to name space within three days after the shipper applies therefor, the shipper shall be free to secure space elsewhere without prejudice to the contract, but the shipper must first give the conference an opportunity to arrange space; that the carriers agree to furnish "space in such vessels as they may respectively load"; that if the shipper shall make shipment in violation of the contract the carriers "shall have the option at any time to declare this agreement terminated, and the Merchant shall

be liable to the carriers for liquidated damages equal to twice the amount of freight that would have been payable [fol. 65] under this contract in respect of the shipments constituting the violation"; that "other commodities as may be shipped by the Merchant from time to time, which shall be deemed covered by this agreement," shall be at the lowest rates then in effect for the particular commodity; that rates are subject to reasonable increase from time to time, and that the notice thereof shall be deemed accepted by the shipper unless, within 20 days after his receipt of the notice, he gives the carriers written notice of non-acceptance, in which case the carriers shall have the option at any time within 20 days after receipt of the shipper's notice to cancel the agreement on giving the shipper at least 60 days written notice; that the carriers shall have the option to reduce their rates, the shippers in such case to receive the benefit thereof; and that the agreement shall continue in effect throughout consecutive subsequent years subject to the right of either the shipper or the carriers to terminate it as of December 31 in any year by giving the other party 90 days written notice of termination.

The testimony showed that by practical operation the contract shipper was guaranteed against a change of rate for at least 80 days.

Our function in this proceeding is to re-examine the dual rate system to determine whether it violates any express statutory provisions, or if not; whether it contains any elements which violate statutory standards so as to require administrative disapproval.

The gist of Isbrandtsen's argument is that the system violates statutory provisions in that it sets up dual rates for the same service and thereby necessarily creates *discrimination* between those shippers who sign and those who refuse. Isbrandtsen claims that it makes no difference that such discrimination may not be *unreasonable* or *unjust*, contrary to the requirements of sections 15, 16, and 17 of the Act. It points out that the language of section 14 (3) of the Act, unlike that of the other sections referred to, outlaws not only *unreasonable* discrimination but *all* discrimination. [fol. 66] Relying on dicta of the Supreme Court in *Swayne & Hoyt, Ltd.* v. *U. S.*, 300 U.S. 297, complainant concludes that a *prima facie* case of discrimination has been made

out, which may not be excused on any showing of reasonableness.

Section 14 (3) of the Act reads as follows,

> "That no common carrier by water shall, directly or indirectly, * * *
>
> "Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason."

It is to be noted that the modifying words "unjust" or "unreasonable" do not appear before the word "discriminating" in this section, as they do in the other sections referred to, although the word "unfair" follows immediately after. Nevertheless, we cannot agree that this section has the effect which Isbrandtsen claims. For this there are several reasons: first, such an interpretation would be contrary to the interpretations which our predecessors have uniformly given since the adoption of the Act in 1916; secondly, such an interpretation would make impossible any harmonious administration of the Act as a whole; thirdly, such construction would extend the application of section 14 (3) to carriers' activities generally, whereas we think application is limited to such retaliation as is there described.

Referring first to the prior decisions of our predecessors, it must be pointed out that the attack made against the dual rate system in this case is substantially the same as was made in *Pacific Coast European Conference Agreement, supra*, in which the Department of Justice and the Department of Agriculture participated. What the Maritime Commission said in that case is so appropriate here as to require extensive quotation (p. 16):

> "Every decision, whether by a court or by us or our predecessors, since the passage of the Shipping Act, involving the legality of the contract rate system, has [fol. 67] rested upon the facts presented in the specific case. Wherever the system has been condemned the decision has turned on some circumstance which re-

sulted in a discrimination, or in detriment to the commerce of the United States, or in some violation of the Shipping Act, 1916. No administrative finding sustaining the lawfulness of the system has been reversed by the courts.

"Although practically all of the points of attack against the lawfulness of the contract rate system were made in *U. S. Navigation Co.* v. *Cunard S. S. Co., Ltd.*, 284 U. S. 474, the court did not pass upon the merits of the complaint but decided that the matter should have been presented initially to the Shipping Board before resort was had to the courts. It is significant that no further action was taken by complainant in that case.

"We cannot ignore the fact in *Swayne & Hoyt* v. *U. S.*, 300 U. S. 297, the Supreme Court did not hold that the contract rate system was in violation of section 14 of the Shipping Act, 1916, or that the establishment of two different rates for identical services (contract and non-contract) was in itself unduly and unjustly preferential. In giving full consideration to the decision of our predecessor the court decided that the interpretation which had been placed upon the facts by our predecessor was substantially supported, and that the court was not empowered to make a contrary finding.

"Contrary to the arguments made to us, Congress was informed before it passed the Shipping Act, 1916, of the existence of the contract rate system as well as of the deferred rebate system. Congress took occasion to prohibit the latter specifically. It is reasonable to suppose that had it intended to prohibit the former it would have said so with equal force.

"We can find no authority that the contract rate system is unlawful *per se*. * * * "

In 1933 the dual rate system was under attack in the case of *Rawleigh* v. *Stoomvaart et al.*, 1 U. S. S. B. 285, on the ground that it violated section 14 (3) as well as other [fol. 68] sections of the Act. The Shipping Board pointed out that the dual rate practice had then been in effect for

many years and had received the approbative attention of the Congressional Committee which drafted the 1916 Act. The Board expressly found that the system did not violate section 14 (3). The practice of our predecessors has been to examine the details of each dual rate system which has been presented, and determine whether there was violation of any express prohibition of the Act, or whether any features were unreasonable or unjustly discriminatory. In a number of the reported decisions of our predecessors, dual rate systems have been disapproved on the latter ground. So in *Eden Mining Co.* v. *Bluefields Fruit & S. S. Co.*, 1 U. S. S. B. 41 (1922), a dual rate structure put into effect by a single carrier permitting shippers no choice of service, was disapproved. Again, in *Intercoastal Investigations, 1935*, 1 U. S. S. B. B. 400, and in 1936, *Gulf Intercoastal Contract Rates*, 1 U. S. S. B. B. 524, the Secretary of Commerce determined that the application of the dual rate system in the *intercoastal* trade was unreasonable because of the statutory rate protection there given to intercoastal carriers under the Intercoastal Shipping Act, 1933. The latter of these two cases was, of course, the one reviewed by the Supreme Court under the name of *Swayne & Hoyt, Ltd.* v. *United States, supra*, wherein the disapproval of the dual rate system was based on the Secretary's finding of unreasonableness, and not on the ground of violation of section 14 (3). The court, in a note appended to its opinion (p. 307), discussed the particular interpretation of section 14 (3) urged by Isbrandtsen in this case, but did not adopt it.

Based on the interpretation above outlined, our predecessors since 1931 approved no fewer than 32 conference agreements which provide either specifically or inferentially for the dual rate system—and of these agreements, 24 are now in effect and the respective conferences are making active use of the dual rate system.

[fol. 69] It may be noted in passing that complainant's predecessor corporation, Isbrandtsen-Moller, adopted for itself an exclusive patronage dual rate system from 1937 to 1939 and filed 176 dual rates with the Maritime Commission, thus apparently at that time agreeing with the Commission's interpretation of the law.

Secondly, complainant's interpretation of section 14 (3) of the Act would make any harmonious construction or administration of the Act most difficult. If an agreement between carriers submitted to the Board for approval under section 15 were found to contain no unjust or unreasonable discrimination, it would pass muster so far as that section and sections 16 and 17 are concerned. The Board cannot believe that a different standard was set up for testing such agreements by section 14 (3), which might require an opposite finding. It is to be noted that section 15 of the Act expressly requires the filing by carriers of all agreements including any "giving or receiving special rates." We consider that the lower of the two rates shown in the dual rate tariffs filed in this case to be a "special rate" of this description. Possibly, and in order to harmonize with other language in the same section and with other sections, the naked word "discrimination" in section 14 (3) should be held to mean "unjust" or "unreasonable" discrimination. *United States* v. *Wells-Fargo Express Co.*, 161 Fed. 606, affirmed 212 U. S. 522; *U. S. Navigation Co.* v. *Cunard S. S. Co., Ltd.*, 284 U. S. 474.

Finally, we feel that the language of section 14 (3) of the Act is not to be considered as a standard for judging all carrier agreements, but establishes a prohibition against an undesirable practice, i. e., "retaliation." To retaliate is defined in Webster's New International Dictionary, 1945 Unabridged Edition, as "to return like for like" or "evil for evil." Retaliation perhaps connotes the idea of ven- [fol. 70] geance. Such conduct among carriers in their relations with shippers is in our judgment the evil which section 14 (3) was designed to prohibit. We cannot view the adoption of the dual rate system or the charging of a higher rate to a shipper who voluntarily declines to give his exclusive patronage as a "retaliation." The higher rate cannot be said to be charged as a retaliation for "patronizing any other carrier." It is charged because the shipper does not sign the contract, regardless of whether or not he patronizes any other carrier. A non-signing shipper who does not patronize a non-conference carrier is treated as harshly as a non-signing shipper who ships partially or exclusively with such a carrier.

The history of the various subsections of section 14 appears to support the above analyisis. Section 14 (1) made unlawful payment of deferred rebates, a practice which prevailed prior to the 1916 Act, and up to that time had not been held unlawful by the courts. *United States* v. *Prince Line*, 220 Fed. 230 (1915), reversed as moot, 242 U. S. 537. Section 14 (2) made unlawful the use of fighting ships, a practice which even before the 1916 Act was frowned on by the courts in the same case. Section 14 (4) made unlawful all contracts and rates which unfairly and unjustly discriminated between large and small shippers. Finally, and in addition to the foregoing practices which were considered and condemned in the Alexander Committee Report (Report, *supra*, p. 421), section 14 (3) made unlawful "retaliation" as there defined. A real case of retaliation had been before the courts [*Menacho* v. *Ward*, 27 Fed. 529 (1886)] and was a leading precedent prior to 1916, and in it real carrier retaliation had been condemned. There, two steamship lines engaged in the New York-Cuba trade had increased their rates to plainfiffs because plaintiffs had previously made shipments via tramp carriers in the trade. This was retaliation for the shipper's previous action. The case involved no contract between the shippers and the carriers, a circumstance which was deemed impor-
[fol. 71] tant to the decision, as appears from the following extract, p. 533.

> "The defendants, to maintain the affirmative, assert that their charges are fair because they do not have the whole of the complainants' carrying business. But it can never be material to consider whether the carrier is permitted to enjoy a monopoly of the transportation for a particular individual, or class of individuals, in ascertaining what is reasonable compensation for the services actually rendered to him or them. *Such a consideration might be influential in inducing parties to contract in advance;* but it has no legitimate bearing upon the value of services rendered *without a special contract*, or which are rendered because the law requires them to be rendered for a fair remuneration." (Emphasis supplied.)

We believe that section 14 (3) was a codification of the common law illegality of retaliation as appearing in the *Menacho* decision. We believe that the distinction between what we regard as real retaliation as condemned in the *Menacho* case, on the one hand, and the dual rate system now under consideration, on the other hand, was recognized in the case of *Lough* v. *Outerbridge*, 143 N. Y. 271 (1894), also decided under the common law well before the 1916 Act. The New York case last cited found nothing unlawful in the dual rate system, expressly pointing out that the *Menacho* case applied to an entirely different situation, the court explaining, p. 280:

> "The authorities cited seem to me to remove all doubt as to the right of a carrier, by special agreement, to give reduced rates to customers who stipulate to give them all their business, and to refuse those rates to others who are not able or willing to so stipulate, providing, always, that the charge exacted from such parties for the service is not excessive or unreasonable."

See also *Mogul S. S. Co.* v. *McGregor* (1892, App. Cas. 25, at p. 36.

Isbrandtsen's further argument against our construction of section 14 (3) is that where two interpretations are possible that one which renders the Act unconstitutional in operation should be avoided. Isbrandtsen claims that a construction which approves the dual rate system is equivalent to granting to the conference the power to exclude Isbrandtsen and other independents from the trade, that such power to exclude is equivalent to a power to grant [fol. 72] certificates of convenience and necessity such as Congress sometimes gives to regulatory bodies, but has not given to this Board with respect to foreign trade. Isbrandtsen argues that since this Board may not grant or withhold such certificates, it may not (by our construction of the Act) delegate any such power to a conference without violating several sections of the Federal Constitution and the 5th Amendment.

We think this argument is far-fetched. In the first place, there is no evidence that the dual rate system has in the

past, or will in the future, effectively cause the exclusion of an independent carrier from any trade route on which he wishes to operate. This is particularly apparent from the fact that there is a standing invitation to all independents to join the conferences and to operate on the same footing with conference members. The construction which the Board adopts for section 14 (3) places no restrictions on Isbrandtsen's rights to enter any trade and gives no conference or conference members any right to do so.

Having thus considered the contentions of the parties as to the proper construction of section 14 (3) of the Act, we must determine whether the dual rate system as presented in this case qualifies for approval under section 15. That system in many cases is a necessary part of the conference system. The evidence in this case shows that eastbound conference members had, in 1948, 518 sailing as against 38 by complainant. Complainant and its predecessor over a period of 17 years, except during World War II, have maintained at least two sailings a month on the route. Under the conference agreement, uniform rates are offered to all shippers who sign the conference contracts, and a uniform but higher rate is offered to all who do not. There is evidence that the conference system guarantees uniform rates, prevents cutthroat competition, and encourages frequent and regular scheduled sailings; also, that shippers are [fol. 73] willing to pay rates to sustain stability and frequency of service, which means more to them over a period of time than being able occasionally to avail themselves of somewhat lower rates offered by non-conference carriers. There is also evidence that even though rates of conference members are identical, there is competition among the members in the matter of the service offered. As stated above, the conference system is not under attack, yet it is important to state that there is evidence in the case, if that be needed, to support a finding that the conference agreements, as distinguished from the dual rate system contemplated by them, meet the requirements of section 15 of the Act and deserve the approval which they have heretofore received from our predecessors.

If the conference members are to provide the service which the shippers value, the service must be matched by a

regular availability of cargo from those shippers. The conferences realize that to sustain these mutual benefits, something more than voluntary shipper cooperation must be agreed to. The dual rate system is the device which has been developed for that purpose. Shippers have testified in this case that they deem the stability of rates and regularity of service which a conference can offer are worth a price measured in terms of freight rates. By obtaining exclusive contracts from shippers the carriers are better able to estimate the approximate volume of traffic that is to be expected, tonnage their routes, and arrange their sailings accordingly. As previously indicated, the contracts under consideration guarantee to the shipper that his rate will not be changed for approximately 80 days, and the evidence shows that longer commitments are sometimes granted. In any event, small shippers are put on the same plane with large shippers and both are thus encouraged to engage in "forward trading", so necessary for foreign commerce.

There is a complaint by one of the intervenors that the contracts under discussion are unenforceable at law because lacking legal consideration. We believe a technical consideration sufficient to support the contract is found in [fol. 74] the agreement of the carrier not to change rates for a specified time in exchange for the agreement of the shipper to ship exclusively by the conference carriers. However, the question of technical consideration and legal enforceability does not seem to us all-important in this case for it is clear from the evidence that the contracts once made are in fact observed without resort to court action, and our problem is to determine whether the agreements by the conference carriers to put the dual rate system into effect (regardless of enforceability) is to be approved under section 15. We find in general that the dual-rate system disclosed by the evidence in this case is not contrary to the standards set up in the Act.

On the other hand, one feature of the contract which we think objectionable has to do with the option given to the carrier if the shipper makes shipments in violation of the agreement. The contract provides that in such a case

> "the Carrier shall have the option to declare this agreement terminated and the Merchant shall be liable to the

Carrier for liquidated damages equal to twice the amount of freight that would have been payable under the contract in respect of the shipment constituting the violation."

Our predecessors have pointed out that an option of this sort makes it possible for the carrier to discriminate between shippers, *Pacific Coast European Conference, supra.* We think this objection is valid. Any approval which we give to the use of the dual rate system in this case is conditioned upon the modification of the contract form by the carriers so as to eliminate the option feature and substitute therefor the specific treatment which will be accorded shippers in all cases of violation.

The contract provides for liquidated damages in case of violation equal to twice the amount of freight that would have been payable under the contract in respect to the shipment constituting the violation. Our predecessors have considered the reasonableness of liquidated-damage provisions for violation of contracts of this sort. We agree that this type of contract is one in which a liquidated-damage [fol. 75] provision may be incorporated, because the harm caused by breach is extremely difficult if not impossible of accurate estimation. Of course, the agreed measure of damages must bear a reasonable relation to the breach so as to class it as real damages and not as a penalty. In this case the contract provides for liquidated damages in twice the amount of freight involved. Perhaps this is on the high side, but since by a violation some member of the conference whose ship has sailed, has lost the freight involved, and the conference as a whole has been weakened by the violation, we think the provision is not unreasonable and may be retained. In *Pacific Coast European Conference, supra,* our predecessors approved a liquidated-damage feature for breach of exclusive patronage, limited to an amount equal to the freight involved in the shipment or a certain number of times thereof. Court approval of a somewhat similar liquidated-damage clause was given in the case of *North German Lloyd* v. *Elting,* 96 Fed. 2d 48.

The fact that the conference collects the damages instead of an individual carrier, does not militate against reason-

ableness, since there will be damage to an individual though unascertained member of the conference as well as to the conference as a whole. The collection of damages by the conference appears to be a practicable measure to make the contracts effective for the benefit of the conference members. The result is in substance a pooling of damages, analogous to the pooling of earnings or profits which the Act, section 15, expressly authorizes.

An objection is made to the clause of the contract which requires that all the shipper's cargo originating out of North Atlantic ports be tendered to the carriers for transportation on their vessels at seven American and several Canadian named ports. It is claimed that this clause may discriminate against a shipper who has cargo located at an intermediate unnamed port, or perhaps discriminate as between the named and the unnamed ports. The named ports [fol. 76] include the seven major American ports between Norfolk, Virginia, and Portland, Maine, and it would seem that the shipper is thus given a broad selection of ports from which to choose. The carrier cannot be required to serve ports beyond his choosing and we cannot, therefore, say that the designation of the named ports creates any unreasonable discrimination as claimed.

We think the special treatment accorded to the Department of Agriculture on Government-owned or -controlled cargo, in granting to it the lower contract rate without requiring the Government to sign a contract, is a reasonable exception in the public interests and is not a discriminatory practice.

Exceptions not discussed in this report nor reflected in our findings have been given consideration and found not justified.

Findings

We find as follows:

1. The findings contained in the report of the examiner are a substantial compliance with the orders of reference of the Commission of December 19, 1949 and January 13, 1950.

2. The provision contained in the eastbound contract permitting termination of the contract and the collection of

damages by the conference at the conference's option, is unreasonable and should be eliminated.

The use of the dual rate system by the two conferences and their members is not unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and does not operate to the detriment of the commerce of the United States, and is not in violation of the Shipping Act, 1916, provided that the form of contract used shall be modified so as to be in keeping with finding (2) above.

An order will be entered dismissing the complaint.

[fols. 76a-77] Order

At a session of the Federal Maritime Board, held at its office in Washington, D. C., on the 1st day of December A.D., 1950

No. 684

ISBRANDTSEN COMPANY, INC.

v.

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE et al.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board, on the date hereof, having made and entered of record a report containing its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint herein be, and it is hereby dismissed.

By the Board.

(S.) A. J. Williams, Secretary.

[fol. 77a] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before: Hon. Jerome N. Frank, C.J.; Hon. Sylvester J. Ryan, D.J.; Hon. Samuel H. Kaufman, D.J.

[fol. 78] **Transcript of Hearing**

New York, December 20, 1950, 2:00 o'clock p.m.

Met pursuant to adjournment.

APPEARANCES:

John J. O'Connor, Esq., for Plaintiff, and William L. McGovern, Esq., of Counsel.

Burlingham, Veeder, Clark & Hupper, Esqs., For North Atlantic Continental Freight Conference, et al.; Roscoe M. Hupper, Esq., and Burton H. White, Esq., of Counsel.

Paul D. Page, Jr., Esq., and George F. Galland, Esq. (Washington, D.C.), Attorneys for Federal Maritime Board.

Gareth M. Neville, Esq., and Robert Murray, Esq., Attorneys for Department of Justice.

Malcolm Hoffman, Esq.

Henry A. Cockrum, Esq., Attorney for the Secretary of Agriculture.

Mr. Hoffman: In connection with the Isbrandtsen vs. United States, I would like to ask leave of the Court to introduce Government counsel, who are members of the District of Columbia bar, and respectfully ask your leave pro hac vice that they might appear here. They are Mr. Gareth M. Neville, Mr. Henry A. Cockrum and Mr. Robert M. Murray.

[fol. 79] Judge Frank: Are we going to have the pleasure of hearing from you?

Mr. Hoffman: You will not, your Honor.

Mr. Cockrum: May it please the Court, my name is Cockrum, representing the Secretary of Agriculture of the United States. I have filed with the Clerk of the Court a motion for leave to intervene in this action on behalf of the Secretary. I am wondering at this time

if it is necessary to submit to the Court an order for the signature of the Court.

Judge Frank: Is there any objection?

Mr. Hupper: I object, if your Honors please, on behalf of the carrier respondents.

Judge Frank: On what ground?

Mr. Hupper: On the ground that intervention by a representative of the Government in some capacity other than the Federal Maritime Board is not in order. The intervention can be at this time, I respectfully suggest, only in support of the order of the Board and not in opposition.

Judge Frank: They were intervenors before the Board?

Mr. Hupper: Quite right.

Mr. Cockrum: That is right, sir.

Mr. Hupper: And it was passed upon there.

[fol. 80] Judge Frank: The Board granted it, is that right?

Mr. Cockrum: That is right.

Mr. Hupper: Yes, but whatever the situation was then, that situation has been superseded by the report and order of the Board, and I submit that nobody is entitled to contest that order from any Government department.

Judge Frank: Oh, not even the Department of Justice?

Mr. Hupper: The same applies to the Department of Justice.

Judge Frank: The statute gives them the right, doesn't it?

Mr. Hupper: Not to oppose the report and order of the Board after investigation. They can be heard only in support of it.

Judge Frank: Well, that is not the practice—you may be right. I am astonished.

Mr. Hupper: I think I am right. I do not intend to argue it.

Judge Frank: I am astonished to hear it. In Interstate Commerce cases we often hear differences between them.

Mr. Hupper: That may be, but I consider it absolutely [fol. 81] illegal and improper, and in order to carry out my thought on that subject I move now to strike from the files of this Court the answer filed by the Department of Justice, wherein it, in substance, attacks the report and order of the Maritime Board.

Judge Frank: If you are allowed to intervene, will you adopt the answer filed by the Department of Justice?

Mr. Cockrum: No, your Honor.

Judge Frank: Have you other grounds?

Mr. Cockrum: The United States Department of Agriculture intervened in the administrative proceeding before the Maritime Commission under the Agricultural Marketing Act of 1946.

We also intervened in that proceeding as a party in interest since the United States Department of Agriculture is one of the largest shippers in the United States.

Judge Frank: I know. Well, do you have anything that you want to say by way of formal answer in the way of a pleading——

Mr. Cockrum: No, your Honor.

Judge Frank: —that hasn't been said by the Department of Justice?

Mr. Cockrum: No, your Honor.

Judge Frank: You just want to file a brief.

[fol. 82] Mr. Cockrum: That is right, sir. We are intervening as a matter of right.

Judge Frank: Judge Ryan suggests that it is a practice that has often been used, that if we do not allow you to intervene we will at least hear you as amicus, and you may file a brief as amicus. That will make the Board and everybody feel better. We will limit it just as much or just as little either way, and perhaps that is the best thing to do.

We will take under advisement your application for intervention.

Mr. Cockrum: Thank you, but I might say, may it please your Honors, that we intervened in the Maritime proceeding as a matter of right, as one of the largest shippers.

Judge Frank: I understand.

Mr. Cockrum: In our own capacity, in the country.

Judge Frank: I understand.

Mr. Hupper: I have nothing to say against the Court listening to friends, so-called.

Judge Frank: Yes.

Mr. Hupper: But I do wish to put on the record here a formal motion to strike out the answer of the Department of Justice on the ground that the Department had no author-

ity whatsoever, since the Federal Maritime Board made [fol. 83] its report and order, to appear here except in support.

Judge Frank: Mr. Hupper, you may be right. As I said, in interstate commerce cases where attacks were made on sufficiency of orders of the Commission, we have had the Department of Justice appear opposing the Commission's orders.

Mr. Hupper: Well, I cannot help that if earlier mistakes have been made, but I am not going to make one now.

Judge Frank: Very good. We will take it under advisement and we will hear from the Department of Justice as amicus meanwhile.

Mr. Hupper: I may say that I believe counsel for the Federal Maritime Board will have something to say on this subject, and I won't prolong the agony at this time.

Mr. O'Connor: Your Honor, may I suggest that the United States is a party in this action and is still in the act

Judge Frank: Judge Kaufman wants to take it under advisement. I had understood that the Department of Justice appeared in this case as a matter of right.

Mr. O'Connor: That is right.

Judge Frank: That has been my understanding, and [fol. 84] I understand that they so appeared in the United States Supreme Court in the interstate commerce cases. I do not know how it may be in this particular field.

Mr. Neville: If your Honors please, that is the position of the Department of Justice, that we appear as a matter of right, as a statutory defendant, and the practice, while I guess it is not common—

Judge Frank: All right, you need not proceed. Your motion is denied and we shall hear from you later.

Mr. Neville: Thank you, your Honor.

Mr. Hupper: I respectfully except, and I will file, if your Honors please, a formal motion so that it will be part of the record.

Judge Frank: Very good. Now, how much time will we need for this?

Mr. McGovern: May I ask your Honor what the present posture of the case is? Is there a motion to dismiss here

that comes up first, or are we going to go ahead with our basic argument on the merits?

Judge Frank: Well, I think you have filed your bill; I think the complainants should be heard first.

Mr. McGovern: I think that on the direct argument in chief ——

Mr. Hupper: I may say to your Honor that there is a motion pending here, from the 11th, to dismiss, and as I [fol. 85] understand it, this argument today is pursuant to that motion and further hearing on it.

Judge Frank: Well, it is of no material interest to us which we hear first.

Mr. Hupper: I may say that I intend to speak not more than five minutes at the most.

Judge Frank: I do not see what difference it makes, whether we hear it forward or backward, and if you care to proceed first, there is no objection.

Mr. Hupper: If your Honors please, I appear here for the defendant carriers and make the statement—it is certainly no news to your Honors—that there has been filed with this Court a certified copy of the determination of the Federal Maritime Board, as successor to the United States Maritime Commission, due to that Commission having been dissolved as a part of the reorganization procedure of Mr. Hoover's committee.

That report and order of the Board is supported by substantial evidence, taken in a very complete hearing in which there was more than ample testimony covering the position not only of carriers but of shippers, followed by a report of the Examiner, exceptions to which were filed and duly argued before the Maritime Commission in December, 1949.

The Commission, after consideration of that argument [fol. 86] and all the arguments theretofore developed, ordered the Examiner to make a supplementary report, which he did in due course, to which further exceptions were filed.

At that point, procedure lagged a bit, not due to anybody's fault but due to the reorganization I mentioned a moment ago. After the Federal Maritime Board got underway, which took a little time, and further argument was had in October last, the report and order of the Board

are the result of all those proceedings and the consideration given by the new Board as covered by the decision of December 1, and the order based thereon.

Now what we say here is—and it is the substance of the entire position from our side—that a very complete hearing, after full consideration, and an order based thereon, has been had, which is at least presumptively final as concerns the contention made by the plaintiff, both before the Board and submitted now to the Court.

There is a vast array of cases—I do not need to tell your Honors that, and particularly Judge Frank who has had so long an experience in matters of this kind—a vast array of cases which say, in substance, that when a lawful administrative body deals with a matter fully, as we say that body dealt with this one, comes to its conclusion, that con-[fol. 87] clusion stands as a final determination of the subject-matter under the Shipping Act of 1916, unless it shall be pointed out that there is some very grievous defect in the proceedings, or substantially an utter lack of evidence to support the determination reached, and I think the case being in the status and posture that it is, it is the duty of the other side to show, if they can—and they have the right to make all the contentions they wish—that there is something not known yet which should be considered to displace the determination of that Board.

I do want to point out that, as I understand the law, this is not an appeal from the determination of the Board; this is an examination of what the Board has done to see whether due process of law has been exercised.

Judge Frank: The word "appeal" is colloquially used. It really isn't an appeal. It is a suit began to test the validity of the order.

Mr. Hupper: Well, anything you choose to call it.

Judge Frank: It isn't an appeal.

Mr. Hupper: It is not an appeal in the sense that I have a suit in the District Court and get beaten and go up.

Judge Frank: No, it is not.

[fol. 88] Mr. Hupper: I think I have said enough to convince your Honors of what our position is, which we think is sound and right.

Judge Frank: Does the Board now want to proceed?

Mr. Page: Well,——

Judge Frank: Just a minute. Judge Kaufman thinks we ought to hear the plaintiff first.

Mr. Page: That is precisely what I have in mind.

Judge Frank: Very good.

Mr. McGovern: If the Court please, I assume that you will consider this motion as though addressed to the merits on the entire case.

Judge Frank: That is because the evidence is in and this is a motion made to the evidence.

Mr. McGovern: Precisely, so I will go ahead simply on the merits of the case itself.

We have been, as the Court knows, wandering about in the administrative process for the past two years, trying to arrive at some posture whereby we can get back into court, and this is a statutory review, which is what we are here to do today.

During the course of those administrative proceedings, we have had many arguments before the Board and its predecessor, the Commission, and I regret, at least, that we are talking here today without, in the face of those adminis- [fol. 89] trative proceedings, any findings of fact whatsoever, denominated by any of these administrative bodies as findings of fact.

Judge Frank: Well, do you think the absence of a formal finding important, if the opinion contains the substance of the finding?

Mr. McGovern: No, I would think not, if the opinion contains something that began to approach a factual finding. I think, however, when the Court examines it, you will be compelled to conclude that we do not have much more here.

Judge Frank: Perhaps I should ask the Board's counsel. Do I understand that the Board adopted the Examiner's findings and recommendations?

Mr. Page: The Board did not do precisely that. It stated that the Examiner's report was consistent with its report and that it therefore becomes a part of the record of the ultimate findings.

Judge Frank: They said that these ultimate recommendations were agreed to, and did they adopt them?

Mr. Page: They adopted them in so far as not inconsistent——

Judge Frank: And the Examiner, in effect, made findings to some extent as requested by the plaintiff, and did the Board accept those findings?

[fol. 90] Mr. Page: In so far as not inconsistent with its own report. In general it accepted them.

Judge Frank: That is not very helpful. We are accustomed to getting findings from bodies like the Interstate Commerce Commission, the SEC and the F.T.C., and so on, denominated findings, which are helpful, and what they have, they give us. If they have an Examiner they give the Examiner's report and indicate precisely "we agree" or "we do not agree." They may disagree with him.

Now I do not know whether they adopted his findings or not. Are we to assume that they did?

Mr. Page: I can go no further than the report of the Board.

Judge Kaufman: Do you have another copy?

Mr. Page: I shall be glad to make some references to that point in my main argument.

Judge Frank: Proceed.

Mr. McGovern: However the case may be, if the Court please, with regard to particular findings or denominated as such or not, I think on the face of the record as it stands today, there are five fairly concrete factual conclusions about which I suggest there is no substantial dispute among the parties or between ourselves and the various interveners and the Board. Those are the factual conclusions, really, [fol. 91] that we have set forth in our own brief, and they are set out in the index.

I would like to briefly predicate my argument upon those for whatever help they may be to the Court. I think on the face of the record that this much is now fairly admitted that, in the first place, for precisely the same transportation service, the exclusive patronage contract system establishes two sets of rates, one of which is differentially higher and arbitrarily higher than the other by twenty to thirty per cent.

I think it is also conceded that the sole consideration entitling a shipper to the lower contract rate is his agreement

not to patronize another carrier. By the same token, the higher non-contract rate is charged a shipper for identical transportation services solely because he reserves the right to patronize another carrier, and we think now, in the present posture of the record, by virtue of the conclusions or findings that the Examiner did make, and the concessions of counsel, that it is now pretty well conceded that the shipper is coerced into signing the exclusive patronage contract to escape the imposition of those higher non-contract rates on that part of his transportation requirements, which his business exigencies require him to seek from the Conference carriers.

[fol. 92] In that respect your Honor will recall that whereas we are a single flag carrier, giving an established service fortnightly, or approximately 24 sailings a year, that all the other lines which comprise the Conference of course have a total of, I think, in the neighborhood of 500 to 600 sailings per year, and that consequently, because of the aggregate effect of their conference activities, offer services, some part of which most shippers in this trade must have access to; and, finally, I think on the face of the record now, your Honors, it is pretty well admitted that the exclusive patronage system, if allowed to go into effect in this Continental and North Atlantic trade, will have the notable effect of producing a monopoly of all of the customers in the hands of the Conference carriers.

Now I suggest that we have annotated those findings in the brief. I do not think there is any substantial criticism or quarrel with any of them. I suggest to the Court that on the face of the factual conclusions, such as those about this proposed contract system that we are here for today—and I think in retrospect we have been doing so for the past two years, really belaboring the obvious when we argue the application to facts like those of the Congressional prohibition in Section 14(3) against retaliating or discriminating [fol. 93] against a shipper because he patronizes any other carrier.

To lay those factual propositions side by side with the statute, in our judgment admits of almost no dispute whatsoever, and it is our suggestion today—and this I think is particularly applicable to Mr. Hupper's motion to dismiss—

that what the Commission has sought to do here is what Commissions have from time to time sought to do before, and that is to authorize a practice completely forbidden by statute; and I suggest, in passing, I direct the Court's attention to the recent case of Mitchell v. United States, 313 S. 80, where you will recall the Supreme Court pointed out that while the Interstate Commerce Commission has a very large discretion in administering the Act, there are certain forbidden discriminations, and one of them is to treat colored people differently than white persons; and by the same token the Court will recall that in the recent case of I.C.C. v. Mechling, which was a case in which the I.C.C. sought to justify the imposition of higher rates on grain moving east from Chicago, depending upon whether that grain came into Chicago by barge or by rail—the I.C.C. sought to authorize the imposition of a higher rate on the grain moving into Chicago by barge, for identical transportation services from Chicago east.

Your Honors will recall that in the original case, which [fol. 94] involved the same sort of jurisdictional question that we have, whether they ought to go back for a specific ruling by the I.C.C., Mr. Justice Black in his dissent pointed out that "reasonable persons may differ as to the wisdom of such a policy, but not as to the certainty of its result; and, as will be shown, Congress has made the policy judgment and has flatly forbidden the Board to do what it has done."

Your Honors will recall when the case came back from the Supreme Court, 63 Supreme Court, 1296, 67 Supreme Court, 894, the orders of the I.C.C. were reversed, and I call that case to the Court's attention particularly because it does have many analogous features to this case. There you had a statute where the Interstate Commerce Commission undertook to preserve the advantages of each type of transportation, and there was a case where the Commission authorized the imposition of two sets of rates, the higher rate being applied for identical transportation services against grain coming into Chicago solely because the grain came into Chicago by barge rather than by rail, and there is a case where the Supreme Court and the District Court too, held that the Commission had transgressed the statutory authority and its acts were null and void.

Judge Frank: We have two questions here: One, did [fol. 95] the Commission exceed its powers in authorizing any sort of exclusive patronage contract.

Mr. McGovern: I think so.

Judge Frank: The second question is, assuming that they had the power, did they err in approving this particular one? That divides the argument.

Mr. McGovern: That is true.

Judge Frank: You are going to take that point up.

Mr. McGovern: Well, we have not stressed it too much, because we think it was a case where they had expertise and discretionary power to approve or not, but we are primarily directing our attention to the proposition that they have sought to do something here which the statute flatly forbids them to do.

Judge Frank: What do you say of the reference in the briefs and in the Commission report to the Alexander Committee comments on contracts?

Mr. McGovern: I will come to that directly.

Judge Frank: I am frank to say that were it not for that I would think you had a very easy case.

Mr. McGovern: I would think so, too, and I think we do, despite those references, for the reasons that I will point out immediately.

Judge Frank: I am talking for myself, of course.

[fol. 96] Mr. McGovern: Well, I will direct my attention to that directly. There was, I think, some element of confusion injected into the case, to begin with, by virtue of footnote 3 in the Swayne & Hoyt case—that is the footnote to which your Honor adverted yourself in your earlier opinion. Your Honors will recall in that footnote, the Supreme Court in Swaine & Hoyt said,

"The committee"—that is, the Alexander Committee—"recognized that the exclusive contract system does not necessarily tie up the shipper as completely as 'deferred rebates,' since it does not place him in continual dependence' on the carrier by forcing his exclusive patronage for one contract period after another under threats of forfeit of differentials accumulated during a previous contract period. Accordingly the committee did not condemn the contract system completely."

Now they cite the Rawleigh case, 1 U.S.S.B. 285.

I have examined the record in this case in the Supreme Court extremely closely and there is no reference in any paper filed in the court or in any brief to the Alexander report, either in the brief of the counsel for the lines or in the brief of the United States. There is a reference to the Alexander Committee report and an extract from the Rawleigh case, cited in one of the defendants' briefs, and I think it is quite clear, therefore, that this particular refer- [fol. 97] ence to the Supreme Court is that same statement in the Rawleigh case.

Judge Frank: Well, I think we can say, without disrepect to the Supreme Court or to Chief Justice Stone, that the comments in the footnote were all dicta anyhow.

Mr. McGovern: Yes.

Judge Frank: So that we would not feel necessarily obligated to follow it if you could show us that it was inadequate. But nevertheless there is a reference in the Alexander report, and the Justice correctly stated it.

Mr. McGovern: Yes. I want the Court to understand that while it is quite clearly dicta, I am not suggesting that Supreme Court dicta is not entitled to great weight. I want particularly, though, to direct the Court's attention now to this contrast in the footnote itself, and I think it is a contrast that Mr. Chief Justice Stone was simply not aware of at the time, but I point it out to the Court to show how inconsistent the footnote itself is within it.

I have just read you the last sentence:

"Accordingly, the Committee did not condemn the contract system completely."—citing the Rawleigh case.

The footnote goes on, "The policy of the statute may [fol. 98] properly be applied where, as in the circumstances of this case, the contract system must be taken as actually operating to effect a monopoly," and they cite the Eden Mining case for that—Eden Mining Co. v. Bluefields Fruit and Steamship Co.—and it is in our brief.

Now I point out to you that it is pretty well admitted, on the face of this record, by counsel for the Commission, as well as by the Examiner, that the almost necessary effect of

the use of the exclusive patronage system in this trade will be to produce a monopoly.

Judge Frank: Yes, there is an ambiguity here, I think you must admit. In some of those cases decided by the Board or its predecessors when they were talking of a monopoly, they were talking of the shipping companies, and they were talking of cases where one shipping company was excluded from the Conference. That does not apply here because you can join the Conference if you want to.

Now there is another so-called monopoly question which this does not cover, and that is the effect on the shipper as distinguished from the effect on the shipping company. That, it seems to me—and I myself would like to have your reaction—it seems to me undoubtedly that the statute allows what would not be allowed under the Sherman Act, namely, that a group of shipping companies can get together [fol. 99] and agree on their rates and agree on their services, and do all sorts of things which would plainly violate the Sherman Act, but the question is whether they can include this contract clause which, whether you join or not, would mean that this Conference would be in a position, as I understand it, to fix its rates at any height it pleased, without any possibility of governmental supervision, as long as those rates were not discriminatory against some particular place or person.

Mr. McGovern: That is right, and I suggest merely stating the proposition indicates it is so incredible that it is scarcely to be presumed that Congress would approve that kind of arrangement.

Now coming to your last point first, it is our view that Section 15 contemplates voluntary cooperation by carriers because involuntary coercive devices are forbidden by Section 14. However, under Section 15 the only possible way you can harmonize this section of the Act with Section 14 is to limit the cooperation authorized by Section 15 to voluntary cooperation, because as I said, Section 14 prohibits absolutely the deferred rebate, it prohibits absolutely the fighting ship. Nobody here today contends that the Commission can authorize a fighting ship.

Judge Frank: I must say that you have not answered one [fol. 100] question. The Alexander Committee report did

say something that contracts were not necessarily invalid. Now what did that mean?

Mr. McGovern: Let me come directly to the Alexander Committee report, if I may, your Honor.

Judge Frank: Because I think you will have to concede that the Alexander Committee report was the basis of the legislation.

Mr. McGovern: No argument about it. It was the basis of the legislation, but let me once and for all lay the ghost of the Alexander report.

I point out to you that Congress did not adopt the Alexander report in regard to either Section 14(3) or Section 14(4). The Alexander Committee recommended the following ban, and I quote:

> "or by resorting to other unfair methods of discrimination."

And when that was enacted by Congress, as you will see in this brief, the statutory language is "or resort to other discriminating or unfair methods."

Let us now get to Section 14.

Judge Frank: What was the language of the report?

Mr. McGovern: The language of the report was, "or by resorting to other unfair methods of discrimination." That is set forth at page 11 of our brief, incidentally. That is [fol. 101] the principal distinction.

Now to fortify the argument we are making, I point out to you that when we get to Section 14(4), that Congress did exactly the reverse. In 14(4) the Alexander Committee recommended that all differences in rates based upon tonnages should be prohibited, and Congress rejected that recommendation and put in the concept of unreasonableness in 14(4).

I am pointing out to you that Congress disagreed with its own committee in two respects. In 14(3) the unreasonableness concept, despite the recommendations of the Alexander Committee, it inserted that same concept in 14(4) again despite the recommendations of the Alexander Committee.

So the final answer to footnote 3 in the Swaine & Hoyt case, Judge Frank, is, let us say, it is literally true that the

Alexander Committee did not recommend a ban against all contracts. I suggest that our problem here today is to enforce the statutory language, not the recommendation of the Alexander Committee.

Judge Frank: Oh, yes—if there was a substantial difference.

Mr. McGovern: Well, I point out to you that there is all the difference in the world in the terms of the context of [fol. 102] this case.

Did you have a question about the actual contracts before the Alexander Committee?

Judge Frank: Do you have anything that indicates that they were of a different character?

Mr. McGovern: In our brief we have cited you in the footnote the subject of the contracts before the Alexander Committee; those contracts before the Alexander Committee differed in the sense that they were actual contracts of carriage. You must realize that at the time of the Alexander report——

Judge Frank: On what page of your brief is this?

Mr. McGovern: We started the discussion of the Alexander report on page 11, your Honor, and then over on page 14, Judge Frank, we deal with the Swayne & Hoyt footnote. In the second full paragraph on page 14 you will note that we point out that "While the contracts before the Alexander Committee were actual contracts of carriage,"—and by "actual contracts of carriage" I mean precisely that, sir—that they were actual contracts of affreightment—two or three lines running in the South American trade would agree jointly to undertake the carriage for Standard Oil of New York, which was a large shipper—and still is. The contracts are very long. They specify the particular [fol. 103] rates. There is a specific obligation on the part of those three carriers to underwrite the carriage on whatever goods are entered by Standard Oil. So you have an actual contract of affreightment. Now I am not suggesting that that distinction is sufficient to distinguish it from this type of case, because I do not know that it would be lawful to do, but I point out that the Alexander Committee never heard, and in my view never dreamed of an exclusive patronage contract system right across the board for eighty

per cent of the carriers in the trade of the type that this Court has before it. And I point out in any case, as I have before, that regardless of what the Alexander Committee recommended or did not recommend, that Congress changed the language in two of the recommendations, in most significant respects, both adversely to the recommendations of the Alexander report. I merely dwelt originally on that confusion itself in the footnote 3—that in one place the Court says the Alexander Committee did not bar all contract, and then the Court says that where the effect of the contract is to produce a monopoly, as in Eden Mining, then of course it may be contrary to the statutory policy. There is an irreconcilable conflict there.

Judge Frank: I would like to ask a question—perhaps it should be addressed to your adversary rather than you. [fol. 104] It may be if they had a conference in interstate commerce or—what is it——

Mr. McGovern: Intercoastal.

Judge Frank: Intercoastal—that there would be more to be said for this kind of a contract because there the Government reserves the right to regulate.

Mr. McGovern: Yes.

Judge Frank: I think I am right, and I think it should be addressed to them.

As to that kind of a conference, which is in foreign trade, there is no right to regulate the rates, provided they are not discriminatory.

Mr. McGovern: That is our view.

Judge Frank: Is that true?

Mr. Page: Well, I maintain, and I shall maintain, although my brother Hupper will disagree with me, that when a conference system—if and when the contract rate system is utilized as a technique for keeping rates unreasonably high, the Board may disapprove the conference system, but there is no rate-making power as such with respect to the foreign trade point. What Mr. McGovern has been talking about is that in the Eden case there was only one carrier——

Judge Frank: That is not the question I asked. It seems to me extraordinary that Congress should have intended to [fol. 105] allow a group of carriers to carry out a practice which would force, in the long run, or tend to force all com-

petitors into their group, and then to fix whatever rate they pleased, because it would be like allowing a public utility company, an electric power company here, to give them a complete franchise and then say "The lid's off; you can charge what you want," because the only regulator of rates other than the Government is competition, and here it is proposed eliminating competition.

Mr. Page: We do have the authority to lay a maximum rate, although not to prescribe rates as such.

Judge Frank: Where is your power to fix maximum rates, if there is no discrimination?

Mr. Page: If it is the Conference which fixes those rates, we may hold that detrimental to the commerce of the United States and refuse to authorize it.

Judge Frank: Oh, you read in the clause that it is unjustly prejudicial to exporters.

Mr. Page: Or detrimental—if your Honor will read it further.

Judge Frank: Where do you find that?

Mr. Page: If your Honor will look at the second paragraph of Section 15, you will find it.

Judge Frank: 815?

[fol. 106] Mr. Page: Yes, the second paragraph in Section 15 of the Shipping Act:

> "The Board may by order disapprove, cancel or modify any agreement, or any modification or cancellation thereof."

Judge Frank: No, I must have the wrong one. Is that Section 815?

Mr. O'Connor: Section 812 of the Code.

Mr. Page: I believe it is section 814 of the Code.

Judge Frank: If "it finds to be unjustly discriminatory or unfair." Is that the section you mean?

Mr. Page: If it finds it detrimental to "the commerce of the United States."

Judge Frank: "or to operate to the detriment of the commerce of the United States."

Mr. Page: And that was so stated in 1 United States Shipping Board at 398.

Judge Frank: Therefore it is your position that if the

Board shall find that the rates were excessively high, it could disapprove the Conference agreement?

Mr. Page: It would subject the Conference to the anti-trust law and thereby make it impossible.

Judge Frank: May I ask a question out of turn?

[fol. 107] Mr. McGovern: Go ahead.

Judge Frank: I want to know whether in this particular case the Commission has inquired into the unreasonableness of these rates? Apparently not. I find nothing in the Commission's report or the Examiner's report.

Mr. McGovern: You will find one thing that is significant, Judge Frank, if I may make this point: In one of the proposed findings of fact we have—and the Examiner found as a fact—that the tariff they were going to put into effect here was War Shipping Administration Tariff No. 17, which was unusually high.

Judge Frank: I know that, but the Examiner said there was insufficient evidence, and the Board made no finding.

Mr. Page: That is quite correct.

Judge Frank: Then—just let me follow this out—your initial approval is made without a hearing, is it?

Mr. Page: Initially it was made without a hearing.

Judge Frank: And there were no findings made.

Mr. Page: There were no findings made.

Judge Frank: And nobody else can appeal.

Mr. Page: No, sir, that is not now true. That was true when this case was started.

[fol. 108] Judge Frank: I see. So that actually the first real hearing, if I may call it that, and everything that the administrative procedure act contemplates, occurred as a result of the filing of this complaint.

Mr. Page: That is true.

Judge Frank: It seems to me under the circumstances the Conference, under the administrative procedure act and under your own regulations, had the burden of proving that the Conference agreement was a valid agreement, and therefore it seems to me the Commission was obligated to make those determinations which would show—to follow your suggestion here—that this was not detrimental to the shippers of the United States. How could it do so without inquiring into the reasonableness of the rates?

Mr. Page: Definitely it must inquire before it can find, but I submit that the statute does not put the burden of proof upon the carriers.

Judge Frank: But the administrative procedure act does. It says that anybody seeking an order—and the same is true of your own code of regulations—you have a provision, 201.112, you say, in suspension proceedings—in all other cases the burden shall be on the proponent of the rule or order which you adopted from the procedure act. I don't [fol. 109] see how you can say it wasn't. I sat on a Commission for several years, and if somebody came in and asked for an order of the Commission, it had the burden of showing, and we had to make findings that they complied with the act. We did not say "We assume that you are entitled to this unless somebody shows the contrary."

Mr. Page: Let me point out that the administrative procedure act does not order him to and does not alter the provision, and where your hearing is not required by statute, as it is not here.

Judge Frank: Very good. Then I will take your own regulation. What do you mean by Section 201.112 that talks about the burden of proof—that at any hearing in a suspension proceeding, etc., etc., "the burden of proof to show that the suspended rate is just and reasonable shall be upon the carrier; in all other cases the burden shall be on the proponent of the rule or order."

Now this is by an order. This is the first carrier order. It would be astonishing if they did not have the burden. Otherwise you would be saying that anybody can come in and ask the Conference agreement be approved, and the Commission has the burden of showing that it is invalid rather than the petitioner to show that he has complied with the statute.

Mr. Page: Your Honor's specific question was as to the [fol. 110] relation of the rules.

Judge Frank: Yes.

Mr. Page: That rule refers to a provision under the Intercoastal Act or in rate proceedings. It does not purport to, and if it did purport to, it could not alter the words of the statute itself.

Judge Frank: What are the words of the statute?

Mr. Page: The words of the statute, which I have immediately available, are that—it is Section 15 of the Act, and it says——

Judge Frank: That is 814.

Mr. McGovern: 814 of the Code.

Mr. Page: 814 of the Code, and it says that "The Board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof," if it makes a specific finding, "and shall approve all other agreements, modifications, or cancellations."

Judge Frank: Yes. Now what the Board did here was a most extraordinary thing until the recent changes. It, without any hearing, approved it, and it is obvious that it could not have been much of an investigation, when nobody could have been present, and there certainly weren't any findings, and it was practically unknown elsewhere in any agency of the Federal Government.

[fol. 111] Now the only features, as our opinion pointed out, and that is why we sent the case back, solely for that reason—we said that you had worked out a practice under the other one, so that actually your first hearing was by way of complaint, and we said since that was not done under, I believe, the benefit of the Commission's hearing and findings, we sent it back. It seems to me this is your first hearing.

Maybe you want to take this position—and I should like the stenographer to note that is the position of the Board—that they need not inquire, when the Conference agreement is submitted to it, it can wash its hands of all consideration of the reasonableness of the rate. Is that your position?

Mr. Page: No, sir, I would never take that broad position.

Judge Frank: You say it may do so if it desires.

Mr. Page: That is right, it may do so.

Judge Frank: In other words, it is entirely your responsibility to the shippers of the United States.

Mr. Page: If you would prefer, I will tell you just what I do mean.

Judge Frank: Well, I want to ask a question: Do I understand you—and I want you to deny it if it is wrong—that Congress has said to this Board, "unless you choose to

[fol. 112] inquire as to the reasonableness of the rates, you shall approve any Conference agreement which in other respects complies with the statute."

Mr. Page: As a matter of law, Congress has said just that to the Commission, that unless you make specific findings you shall approve the agreement. The practice of the Commission does not go so far, and I will undertake to explain it to your Honor in due time.

Judge Frank: All right.

Mr. Hupper: Will your Honor permit me to say just one word at this point because it is material?

Judge Frank: Yes.

Mr. Hupper: I want to make it clear that there is no authority whatsoever under this law for steamship carriers, in a conference, to charge unreasonably high rates or indulge in any prejudicial practices without being overhauled by the Commission. Now the Board under, I think, three separate sections of the Shipping Act, immediately following this Code section 814—there is ample procedure there to attack the lines if they had charged unduly high rates. Somebody puts in a complaint and he says "This rate is unreasonably high." You have a hearing on that subject-matter by itself. If the practice of the carriers with respect to rates is so offensive, let us assume—and I have never [fol. 113] known it to be so—that they are operating prejudicially to the commerce of the United States, in the interests of our importers and exporters, the Board can say at once, "We will have no more of this nonsense and your Conference agreement is cancelled."

That is an *an* absolute right under Section 15, but there are ample provisions in the succeeding sections to protect everybody, whether it is a carrier or a shipper, and I think your Honor may have gotten a little too deep into this situation when you suggest that the Board should investigate the rates before they approve an agreement. If the Board ever got into that situation, it might as well fold up and go out of business——

Judge Frank: I do not know why.

Mr. Hupper: If you will pardon me a moment, I am trying to tell you the picture as I see it.

Judge Frank: Yes.

Mr. Hupper: I say to your Honors that many of these conference agreements and other cooperative agreements are made between carriers that are just going into business, or a new situation develops which leads them to think they should have a conference setup, in the interest of maintaining equality and stability of rates. Some of our friends like [fol. 114] to yell "monopoly" all the time, but the commerce of this country is something different than just a few shibboleths. All right, they do go into business, and we are talking now about the foreign trade, where the competition is world-wide; it isn't always between this country and England. It is between this country and several other countries, and the compe--tion is affected also by carrier operations between different foreign countries not touching our ports at all. It is a tangled web if there ever was one. And if any commission or any court should ever undertake to test, by an investigation in advance, the question of reasonableness of rates, which let us say have not yet been charged, which may not be charged within a year, or if charged at some time or another might change within a week, due to competitive conditions, due to warlike conditions arising, due to any number of conditions, it would be a complete frustration and there would be no sense in having a Maritime Commisssion, there would be no sense in having any cooperation whatsoever, there would be no sense in attempting to establish commerce on a stable basis, or to have not only the American Merchant Marine, so called, or for any country to have a merchant marine—just a free-for-all in cut-throat competition and let everybody charge what rate he wants to and drive everybody else out of business. I am [fol. 115] saying that this statute, the Shipping Act of 1916, is a framework; it is merely a proposal and a proposition on the part of the Government, enacted by Congress after long and careful investigation, and there is nothing new after the Alexander report, really—the principle had been the same for generations. That Act established the principle of cooperation. It did not pretend to go into details. The Congressmen would have been lost; the Commission would have been lost if that had been the case, and nobody would have had anything to do with the proposition. It is a framework of cooperation. Against that framework, and

within it, carriers are permitted to make agreements which are approved, and should be and must be approved by the Commission under Section 15, practically on sight. They do not have to do anything else. That is the law; it says so, unless the Commission finds—and there is no direction that it shall hold a hearing to find, but unless it does find so-and-so, they must approve; and that is what the Commission did in this case. But they did not thereby give away all their rights to protect the shippers of this country, to protect the carriers of this country or the commerce of the United States as between this country and other countries, both ways. They put in that statute, if your Honors will have the patience to read it when you come to consider this case——

[fol. 116] Judge Frank: We have had the patience before.

Mr. Hupper: Well, it will take a little more, I think—that in Sections 16, 17 and 18 of the Act, as I understand it, there is ample power to overhaul everything that is done, and make a correct situation; and let me say on behalf of these defendant carriers with whom I have patiently operated for a good many years, and I understand them pretty well, if they wanted to put themselves out of business and destroy themselves and become Pariahs, so to speak, all they would have to do is to indulge in an unreasonably high rate or wrongful practices, and I say to the Court that there is an intelligent set of men as I know of, not only as concerns their own self-interest but as concerns the interest of the commerce of the United States and the interest of this country when emergencies come, as one now apparently is upon us, and I am tired about this nonsense of monopoly and of the efforts on the part of carriers——

Judge Frank: You may be tired of it, Mr. Hupper, but it is our business to judge it and consider it.

Mr. Hupper: That is right, and it is my business to make the best argument I can.

Judge Frank: Yes.

Mr. Hupper: And to tell you the truth as I see it.

[fol. 117] Judge Kaufman: Mr. Hupper, Section 817 does not refer to foreign carriers, does it?

Mr. Hupper: Well, I haven't got it before me but I am saying that there is enough in there, if your Honor please, to cover both foreign and domestic.

Judge Kaufman: 816 is the one that relates to foreign commerce. That is the only one.

Mr. Hupper: All right. I don't care whether it is the only one or not but it is broad enough to cover everything.

When that Act was passed, your Honor will recall, that interstate commerce by water had not been put under the Interstate Commerce Commission. The name, Intercoastal Act, came along in 1933, so the Act was broad enough to cover all commerce, whether foreign or domestic by water.

Mr. McGovern: Getting back to the reasonableness of rates, just briefly, that you started out with, Judge Frank, let me point out that we tried to comply with the statute in so far as it gives any possibility of relief before the Board. The Board, as cited on page 6 of our brief, rule No. 201.191, provides——

Judge Frank: What is that?

Mr. McGovern: This is the Board's rule cited on page 6, rule No. 201.191, which provides:

> "In addition to the ordinary summary of evidence [fol. 118] and statements of law, with appropriate citations of the transcript, and authorities relied upon, the brief shall contain Proposed Findings of Fact and Conclusions in serially numbered paragraphs."

Then subsequently the rule provides:

> "The Examiner shall pass upon them."

Now if it is the only party here who files proposed findings in accordance with that rule, I would like to suggest there is one very eloquent reason, on the face of the record, that you do not find anything about the reasonableness of the rates, and that is because a higher non-contract rate was fixed as a result of an arbitrary differential. Mr. Andrews, the chairman of the North Atlantic Conference—and I can dig it out of the record, if necessary—conceded that any rate fixed by an arbitrary differential was prima facie unreasonable because it was fixed on an arbitrary differential without regard to transportation conditions. Now obviously, sir, if the contract rate is reasonable, the non-contract rate 20 to 30 per cent higher without regard

to transportation conditions is not reasonable; it has to be unreasonable.

Judge Frank: I must say that I do not follow that quite, because assuming that the exclusive patronage clause is valid—assuming it is—and it has got to be unreasonable in your case; in other words, if it is valid, then the reason-[fol. 119] able rate is the contract rate, and the other is put in there by way of coercion. Now the question is whether they may put in a coercive rate.

Mr. McGovern: I am saying that you could not possibly justify that in a rate proceeding.

Judge Frank: No, it isn't a rate. It is a weapon, it is a bludgeon.

Mr. Hupper: I wish to say that there was no such concession.

Judge Frank: Well, it is very obvious in the Examiner's report, and it must be to anybody who isn't naive, that the purpose of the extra rate is to coerce them. For example, the Commission itself says that this is a non-voluntary method.

Mr. McGovern: It says that they cannot rely upon voluntary competition to secure the adherence of the shippers.

Judge Frank: Something more than voluntary shipper cooperation must be agreed to, and I say if that is valid—I do not think it makes much difference—it cannot be reasonable. Otherwise the contract rate would be unreasonably low, unfairly to the shipping companies.

Mr. Hupper: May I say, your Honor, you use the word "coercion.". If I go into one store and find something at 25 cents, and I go into another store and find the same at [fol. 120] 30 cents, am I coerced?

Judge Frank: Oh, no, but the store-keeper hasn't got a right to put you in a position where you cannot get any customers, which of course is what you are trying to do here, and it seems to me any effort to disguise that fact renders this whole argument absurd. Let us take what the facts show. The question is, can you do what is intended to put this man out of business, because you are taking away his customers from him. He cannot possibly continue to compete for any length of time, and if it weren't for that you wouldn't have this agreement.

Mr. Hupper: He is not being put out of business and there is no effort to do so.

Judge Frank: No, he can go into business if he goes in with you.

Mr. Hupper: He chooses to go his way because he can cut rates, and so long as he gets business that way, he says it is fine, and this record is replete with that kind of testimony.

Judge Frank: Yes, but let us stop shadow-boxing. The purpose of this clause is to put him in a position where he will either go out of business or join the Conference.

Mr. Hupper: Not at all. I don't care whether he joins [fol. 121] the Conference or not.

Judge Frank: I think this is so transparent that for you not to admit it is just to make a mockery of this whole thing.

Mr. Hupper: Not at all. The purpose of this, your Honor—your Honor ought to get this clearly in mind—is in the interests of the commerce of this country.

Judge Frank: Yes, but that is not the question.

Mr. Hupper: To have stability of rates in competition—

Judge Frank: Mr. Hupper, you go through those phrases. That is the question. The question facing this Court is whether or not legally you can do this. You may say it is fine for the commerce of the country. We are not permitted to authorize something, if it is under attack, because we think it is good for the commerce of the country. We pass daily on statutes that we think are absurd, but we do not have the right to make the statutes; we do what Congress tells us to.

Mr. Hupper: I am telling your Honor that it has been demonstrated as a matter of fact over a long period of years——

Judge Frank: Please. As far as I am concerned I wish you would not indulge in any more boastful talk about that. [fol. 122] Mr. Hupper: I am not boastful at all.

Judge Frank: I am not interested in that. I would ask you to desist. I don't care to hear it. It is in your brief. I have heard that argument. I have read all the briefs, and I am not interested in it. I understand it.

Mr. Hupper: All right.

Judge Frank: And to repeat it is simply to take away the Court's time and effort from what is the real issue in this case.

Mr. Hupper: It is my duty, in representing my clients, when I hear a statement that is contrary to what I understand to be the law, to call attention to it.

Judge Frank: Very good. I am interested in the law and I am not interested in your opinion of what is good for the welfare of the country.

Mr. Hupper: I am stating cases. I am stating propositions.

Judge Frank: Well, I am not interested in your opinion as to the welfare of the country. I am interested in what Congress gave the Board the power to do. I don't know about my colleagues, but it might be good for the country to have all monopolies.

Mr. Hupper: All I am interested in doing, if your Honor please, is to make an honest argument.

[fol. 123] Judge Frank: Very good.

Mr. McGovern: May I say just as an interesting sidelight, on the constant reference to a rate war, that in this record the only single piece of evidence about a rate war that occurred in the India-European Conference——

Judge Frank: Why do we care about that?

Mr. McGovern: I did not think you did.

Judge Frank: Well, I am perfectly prepared to say, and I do say that if there weren't these conferences there would be undesirable conditions, and we have to accept it whether we believe it or not, and it does not make a bit of difference who proves it isn't true. Congress said it was desirable that there should be these conferences and we are going to see that they get their conference agreements. The only question here—as I say, there are really two questions, in so far as I see it, one, can this Board under any circumstances, allow this kind of a contract provision; and, two, if it can, is this particular contract agreement valid in this particular case, and that is all there is to the case, and all the talk about the virtue of the conference agreements on the part of your adversary or on your behalf as to their non-virtue, is absolutely irrelevant. Go to the halls of Congress if you want to argue that.

[fol. 124] Mr. McGovern: I agree, your Honor.

Coming back now to the place where we left off, that is, with regard to footnote 3, I tried to point out to the Court

and I want to re-emphasize that I assume that we are concerned here with the statutory language of 14(3). I point out to you that that language is significantly different from the recommendation of the Alexander Committee, and I also direct your Honors' attention to the statement set forth on page 12 of our brief—this is a statement by former Congressman James F. Byrnes, who was a Congressman then; he was a member of the committee, the floor manager of the bill, in which he said:

> "The regulatory features of this bill are agreed to by all fair-minded men. They are designed simply to enable an independent ship owner to carry on his business without having the shipping trust drive him out by discriminatory or unfair practices."

Now the interesting thing about that statement is that he uses exactly the statutory language, "discriminatory or unfair practices." So I point out that regardless of what the Alexander Committee once had recommended, that is not the Congressional enactment.

Coming now to the question of how you can harmonize Section 14 with Sections 15, 16, and 17, it is our contention, if the Court please, that the only possible way to make the [fol. 125] various sections of that Act consistent, is to give literal meaning to the language of Section 14(3), because otherwise I suggest Section 14 ceases to have any effect whatsoever.

Judge Kaufman: Section 14(3) is 812 of the Code?

Mr. McGovern: That is right, Judge Kaufman.

Now with respect to that, we have been talking about that section, which prohibits retaliation and discrimination against a shipper for patronizing any other carrier. That is what we have described as a trinity of prohibitions, in that section.

The section prohibits the fighting ship.

The section prohibits the deferred rebate.

In many respects, what the difference is between the deferred rebate and the preferred rebate here we do not purport to know.

However, the third section prohibits retaliation and discrimination against a shipper for patronizing another carrier.

Now it is our view that Sections 16 and 17 of the Act are the sections designed by Congress to protect the shipper against discrimination of one type or another. Clearly Section 14 was designed by Congress to preserve the independent carriage in the American foreign trade. It is different in Section 14(3). The language is addressed to the [fol. 126] question of the shipper who is discriminated against, but the object of the Congressional solicitude in 14(3) is not the shipper but the independent carrier who is in danger of being eliminated if he is denied access to the shippers. We suggest, if the Court please, that thus read, Section 14 and Section 15 are perfectly consistent and perfectly harmonious. Section 15 authorizes voluntary carrier cooperation in Conferences, subject to Commission regulation, but Section 14 ordains that no Conference activity shall be used to coerce or eliminate the independent competition of an independent carrier who elects to remain independent.

Judge Frank: Are you through?

Mr. McGovern: Yes. I would like to reserve a little time for rebuttal in the event that something comes up.

Judge Frank: Very good.

Mr. Page: I think, your Honors, that I am entitled to hear Mr. Neville first.

Mr. Neville: If your Honors please, I have a short memorandum——

Judge Frank: Give it to the Clerk, and he will distribute it.

Mr. Neville: —which sets forth the Department's position (handing to Clerk).

Judge Frank: Have you given out copies?

[fol. 127] Mr. Neville: Counsel have copies.

(Clerk distributes copies.)

Mr. Neville: In view of the discussion that has occurred here before, I feel it unnecessary to make the remarks that I had intended to make, because it is quite clear that your Honors understand the proposition I was going to urge, and as a matter of fact in many cases you have already gone into the subject much more deeply than I had intended.

Judge Frank: Then are you willing to rest on your brief?

Mr. Neville: No, your Honor. The case had been submitted to the court; it had been briefed.

Judge Frank: It had been tried.

Mr. Neville: Yes, on motion for judgment on the pleadings—no trial on the evidence. The Maritime Commission intervened in that case, as it might have done here. I wasn't involved in the argument, but, as I understand the situation, the case is very similar to this one, that is, in the type of argument made.

Judge Frank: That is not a three-judge court, is it?

Mr. Neville: No.

Judge Frank: Who was the Judge?

Mr. Page: Judge Smith.

Judge Frank: Of New Jersey.

Mr. Neville: Yes. In that case, your Honor, of course the Department being the plaintiff in the case, a civil case, made the motion for judgment on the pleadings and had the burden of carrying forward the case. In that case the only intervener was the Maritime Commission, which intervened as of right. Now again, I have not been involved [fol. 130] in that case but Mr. Page tells me that is the situation—is it?

Mr. Page: It is.

Mr. Neville: I have no idea, your Honor, when the decision will come down or just at what stage it is in.

Judge Kaufman: When was that case submitted to Judge Smith?

Mr. Page: That case was submitted approximately last January.

Judge Frank: Last January?

Mr. Page: The briefs either were much delayed, your Honor, by one of the defendants—I think they have been in Judge Smith's hands about five or six months.

Mr. Neville: If I am not out of order, I have here a copy of the brief submitted in that case. I do not have the complaint.

Judge Frank: Does it add anything?

Mr. Neville: No, not at all, unless your Honor would care to determine the exact posture and type of case.

Judge Frank: No.

Mr. O'Connor: Might I point out a great difference between that case and this case, your Honor.

In the Far East case, the Conference agreement did not [fol. 131] contain any language permitting it to use the contract and non-contract rates. They had been using it as they call it, a practice, without any previous authority from the Commission. In this case there is express language used in the report.

Mr. Neville: May I add one thing on that—I trust I am not tiring the Court, but the Department of Justice filed that brief and not realizing that the contract and non-contract rate had been approved by the Maritime Commission, when we got in the case and the Maritime Commission intervened, we were aware for the first time that the contract and non-contract rate in that case had been approved.

Mr. Page: Pardon me, Mr. Neville, but may I help you? The right to use the contract non-contract rate system had not ever been approved by the Commission.

Mr. Neville: By inference under the contract.

Mr. Page: Well, that I will say the Department knew quite well when it filed the suit.

Judge Frank: Now does anybody else want to speak before Mr. Page does?

The Department of Agriculture—will you make it concise.

Mr. Cockrum: I will make it very brief, your Honor. I should like to hand up an original and two copies of the [fol. 132] brief which were filed on behalf of the Department.

The Secretary intervened in the Maritime Commission, and substantial evidence was presented by the Department. We took the position there, and we take the position here, that the Department of Agriculture, and in fact all shippers of products of agriculture, should be entitled to the services of Conference and non-Conference carriers alike without being subjected to any proposed penalty rate of 20 or 30 per cent in excess of the so-called contract rate, which is the going rate.

Judge Frank: You do not deny that Congress did permit this industry to cartelize up to a point.

Mr. Cockrum: Oh, no, sir.

Judge Frank: In other words, let us put it this way, if all shipping companies wanted to join a conference and agree on rates, there would be nothing invalid about that.

Mr. Cockrum: No, your Honor, we have no objection to the conference system—none whatsoever. In the report of the Board, special consideration was given to the United States Department of Agriculture. The Board there said that in the public interest they thought that the Departmen of Agriculture should be given the benefit of an exclusive patronage contract rate under a so-called gentleman's agreement. We have no particular quarrel with [fol. 133] that particular statement by the Board. We seek here the very same privilege for and on behalf of all shippers of agricultural commodities.

We believe that the Supreme Court in the Swayne & Hoyt case was correct when it likened the exclusive patronage rate to a preferred rebate device. We cannot see any difference whatever between the two. They are both equally vicious to our way of thinking. The results are precisely the same, to monopolize foreign shipping in the Conference and to drive independent non-Conference carriers out of the business.

We want the business of both, and we join the Department of Justice and the plaintiff in asking that the Conference in this particular case be permanently enjoined from putting into effect the exclusive patronage contract rate system that is here in issue.

Thank you.

Mr. Page: May it please the Court, I came here today prepared on all points. I knew that I had the Board's report, and the Antitrust Division's, and I drew a very clear line of distinction between the Antitrust Division and the Department of Justice, on the starboard; and I rather thought, if you will pardon me, Henry, that I would find the Department of Agriculture boarding over the stern as [fol. 134] it was; and I have been very pleased at times to meet boarders coming right over the bow and right from the bridge.

Now I would like, Judge Frank, if I may be permitted to do so, and in the interests of expedition, to first make

the argument which I have in mind. I welcome the questions of the Bench, of course.

Judge Frank: Yes, go ahead.

Mr. Page: If I suffered under judicial poundings I would have expired twenty years ago under the hands of Judge Hutchinson, but before I get into the argument as such ——

Judge Frank: Mr. Page, we know your ability and you make your argument.

Mr. Page: I thank you. To deal with the question with which we begin, which is the position of the Court with respect to the appearance here of my friends of the Antitrust Division—and because this is not in our brief I would call your Honors' attention to the opinion of American Trucking Association v. United States, the Circuit Court of the Fourth Circuit, originating in the Eastern District of Virginia, in 1944, 56 Fed. Supp. 394, reversed on other grounds, 326 U.S. 577. I think it is a very helpful case here, and for that reason I would like to quote about six or eight lines.

In that case, the United States through the Anti-[fol. 135] trust Division, confessed error on the part of the Interstate Commerce Commission when its order was attacked before a three-judge court. Through Circuit Court Judge Dobie, the court said:

> "In every civil action to set aside an order of the Interstate Commerce Commission, the United States is, of course, a necessary party. When counsel for the United States appear and take part in the case, it is usually for the purpose of defending the order of the Commission, a coordinate branch of the Federal Government. In the instant case, however, counsel for the United States have confessed error, have admitted the allegations of the complaint and have asked this Court to grant the desired relief to plaintiffs."

Precisely the situation here.

> "Seaboard's counsel tell us that the United States should not be heard in this anomalous role, which virtually amounts to stultification. See United States v. United States Gypsum Co., D.C. 53 F. Supp. 889.

"We hold that the United States cannot confess error so as to make it binding upon us to grant the relief desired by plaintiffs. In McLean Trucking Co."——

Judge Frank: Well, we are not going to take that.

[fol. 136] Mr. Page: Just two more lines, your Honor.

Judge Frank: We are just going to listen to your argument.

Mr. Page: Just a few more lines and I am finished with it—"In McLean Trucking Co. v. United States, 321 U. S. 67 * * * error was confessed by the United States, yet the Supreme Court affirmed the decree of the three-judge District Court, refusing to set aside orders of the Commission. On the other hand, we were glad to consider the brief and oral argument of counsel for the United States, specially representing the Antitrust Division."

Judge Frank: Unless the argument persuades us, we will pay no attention to it.

Mr. Page: Precisely. And again, before I get into the main argument and come down to grips with the real proposition before this Court, I would like to deal with a collateral issue which has come up about the Commission's rules and whether the Commission has strictly complied with its own rule or rules as to findings and the law. I submit in this case—it is not in my brief—that the answer to that, and the answer in good common sense is to be found in the case of McCracken et al. v. U. S. (Interstate Commerce Commission, et al., Interveners), 47 Fed. Supp. 444, 446, and in two sentences this is what it says: "Courts in reviewing pro-

[fol. 137] ceedings should look through form to substance. If a matter has been fairly heard, especially before an administrative body, no order or finding should be overturned because of formal defect."

Judge Frank: Well, you may be sure we will consider that.

Mr. Page: I was sure, and I wanted to buttress that with a citation.

Now, your Honors, Isbrandtsen in this case has advisedly, and probably because there is nothing better that it could do, based its case upon a single point of law, which is that the Maritime Board cannot under any circumstances ap-

prove this order because of the provisions of Section 14(3); and in so doing they have developed what they call a significant difference between the language of the all-important Alexander report and the ever more important and finally binding language of the statute itself.

I submit when counsel for that danced out upon the end of that limb and jumped up and down on it, they should first have investigated its soundness because I exculpate the counsel, of course, from intentionally misleading the Court. They thought in all good conscience that they had taken a good look at the matter and they had by the tail a [fol. 138] snark, but upon deeper investigation, it isn't a snark at all, it is a boojum, and I expect, when I have finished in just a minute, for that argument to softly and suddenly vanish away and never be met with again—and this is why there wasn't any change. Congress, as distinguished from the Alexander report, did not write Section 14(3); it was written by Mr. Alexander himself. I will have to look at my notes because it isn't in the brief, to give you the specific references.

Now this is the Isbrandtsen argument:

"To articulate even more clearly the anti-monopolistic purpose of the statute"—and there was no anti-monopolistic purpose in Section 14(3), as I will show your Honors in a moment—"the Congress did not content itself with prohibiting only 'unfair' methods of discrimination. It went further than its Committee and prohibited 'discriminatory or unfair methods'—a significant change indicating a clear-cut Congressional intent that there should be no discrimination whatsoever, of any type or degree, because a shipper had patronized another carrier."

Now the argument would be very impressive if the statements were true, as they are not true. There was no "significant change." Section 14(3) of the Shipping Act of 1916 has stood unchanged from the moment of its introduction by Mr. Alexander himself. That bill, introduced by [fol. 139] Mr. Alexander himself, was H.R. 15455, 64th Congress, 1st Session, and the report thereon, No. 659, was by Mr. Alexander himself.

Now I guess my good friend Bill McGovern might say that Mr. Alexander changed his mind and overruled himself,

and that would be very convincing if it were true, but it is not true, however, because if you look at the accompanying report, Mr. Alexander cited in support of that language the exact words of the original Alexander report which Mr. McGovern thinks—and I do not think he does so any more—was specifically changed, because it was not changed at all.

Now I would like to come for a minute, if your Honors please, to argue the effect of Section 14(3). It is argued that Section 14(3) prohibits a monopoly, and it does not do any such thing.

Judge Ryan: I do not understand that that is his argument. He does not argue that it prohibits a monopoly.

Mr. Page: I would like to hear him say that it does not.

Judge Frank: I can see that it is perfectly obvious. Of course this statute authorized these people to make agreements that the Sherman Act would have otherwise made illegal, and they had a right, therefore, to agree amongst [fol. 140] themselves on all sorts of things, for which they could have gone to jail under the Sherman Act or the Wilson Act. Now we understand that, and if that is what you mean by a monopoly, of course you can have a monopoly because that is what Congress said you might have, and the Board was told to authorize it.

The only question is, how far—you can do all these things voluntarily, but the question is, how far did Congress prohibit the people who had agreed to confederate together, using methods that would force a recalcitrant—yes, in other days they called him a chiseler—a chiseler out of business, or to come inside. That is the sort of argument we used to hear in the NRA days ad nauseam. Today it is argued—you argue that Congress has said that the Conference could order people to do something effective about a so-called chiseler, and that is the only issue here. Let me hear you on that.

Mr. Page: Good. Now upon its face, it cannot be debated that they had that right. Section 15 says that the Board may approve such a statute if they destroyed competition, and I gather their position would not be substantially different from ours, and they would admit it except for Section 14(3).

Now to get on with the analogy. They say two reasons, [fol. 141] first, that the Alexander report must have in-

tended to prohibit in Section 14(3) because it could not have intended to approve it by Section 15, because they did not even know of its existence. It won't hold water, your Honor. The Alexander report says—and you will find this very extensively in our brief—that "In this connection it is argued that the ordinary contract system does not place the shipper in the position of continual dependence that results from the deferred rebate system."

Now it might be said that does not say "contract—non-contract," but the committee described it. It said "Joint contracts made by the Conference as a whole."

Shall I read these eight or ten lines, your Honor? I do not want to take up your time but it describes it exactly as they are here. It says:

> "Such contracts are made for the account of all the lines in the agreement"—just as here—"each carrying its proportion of the contract freight as tendered from time to time. The contracting lines agree to furnish steamers at regular intervals."

Now my friend Mr. McGovern would like to make a point of the fact that there is no such specific contract here, [fol. 142] but that is unimportant, where a shipper can say, "There is no consideration for my contract, and I can get out of it," but it hasn't anything to do with whether it is an unfair practice,—

> "and the shipper agrees to confine all shipments to Conference steamers, and to announce the quantity of cargo to be shipped in ample time to allow for the proper supply of tonnage. The rates on such contracts are less than those specified in the regular tariff, but the lines generally pursue a policy of giving the small shipper the same contract rates as the large shippers, i.e., are willing at all times to contract with all shippers on the same terms."

Of course it would be hard to argue, first, that Congress did not mean to legalize this because it did not know about it, and argue out of the other side of your mouth that they did know all about it and meant to prohibit it by Section

14(3), the things they did know all about, as shown on the face of their report.

Now did they try to prohibit it by Section 14(3)? I think that is the only leg left that these gentlemen stand on. They did not, and this is why: the draftsmen of the Shipping Act of 1916 could do it with deadly discrimination and precision. I doubt if a better job was ever done in delineating and damming anything than was done on the [fol. 143] deferred rebate system in Section 14. But my friends ask your Honors to believe that the men who could do such a precise and beautiful job of statutory draftsmanship in that Section 14(3), that they could have said very simply, "The contract-noncontract system shall not be approved," and put it in such cryptic language that it drives them to the terrific expedient of trying to argue that the language had been changed, just so that you could get it. It simply does not mean that. It denounces something which is totally different from the contract rate system, and that is setting up a proscribed class.

When the element of contracting, of free action on the side of both parties enters into this, then it isn't what that statute was aimed at. That statute was aimed at, as shown in the Menacho v. Ward case—was aimed at Menacho v. Ward. I think the report of my Board correctly said it was a codification of Menacho v. Ward.

If my friend, Bill McGovern, shipped by another line and he comes in to me and says, "You traded with Cockrum over there, and you are going to pay $50 more a ton," then that is violating Section 14(3). It is all retaliation; they were driven to the point even before the Board, of saying, "Well, it says 'for other reasons,'" but it is still retaliation for whatever reason. That "other reasons" simply [fol. 144] meant whether, because you have contracted with somebody else, or for some other reason you may have been out undercutting me somwhere. That statute is a criminal statute. It must be construed strictly. It makes a man who violates it guilty of a misdemeanor and punishable by a fine of $25,000, and I submit, your Honor, that no rational construction can stretch that statute to cover forbidding the making of contracts on a give-and-take basis.

If your Honors please, I would like to drop out for a minute from the stream of the argument to just cite one

more case that I think is pertinent, and which is not in our brief. I have tried to read realistically and with some care, Sections 14 and 15 of the Shipping Act of 1916, and to put upon them a rational and workable construction. I do not think this case should be decided on exactly how many angels can dance upon the point of a needle. It is whether the needle is a good workable needle and can do a good day's work.

Now I could argue, and I hope rather convincingly that in the first place, even if Section 14(3) prohibited this Act, that even then the Board would not be inhibited from approving a Conference agreement to do it, because the statute does not say—in the first place it does not say "You shall disapprove it," at all. It says "you may." [fol. 145] In the second place, it does not say that you may disapprove agreements which violate this statute. It says "You may disapprove agreements which you find to violate this statute."

Now I say that might be very well read to give this Board exclusive jurisdiction, but I do not believe it was so intended. I do not think that it was intended to mandate. I think that should be read "shall." I do not think this Board is employed to play Charlie McCarthy to any conference. I think that while upon its face—and bear this in mind, your Honors, and I think it is quite interesting—my Board had to approve this Conference agreement in this adversary proceeding—and why? Because it had not found it to contravene it. I mean, it had to approve it on that point only; it had to. Not having found it to violate the law, there was no ground for it to disapprove.

Judge Frank: That is quite true. If we conclude that it should have, then we will say that it should have.

Mr. Page: This is purely introductory to the point which I am making. So while in my opinion the Board's findings on a pure point of law are not conclusive upon this Court, while I do not see it the duty of this Court to upset a decision which they found to be an incorrect conclusion of [fol. 146] law, I submit, and I cite Chief Justice Stone who said, in the first place, "that the weighing of conflicting evidence is for the Board and not for the courts, that the inferences from the evidence are to be drawn by the Board

and not by the courts, save only as questions of law are raised and that upon such questions of law, the experienced judgment of the Board is entitled to great weight."

That is Medo Photo Supply Corp. v. National Labor Relations Board, 321 U. S. 681.

Well, of course, a practical reading of that statute is a reading which we ask of this Court, a practical common sense reading of Section 14(3) is what we ask of the Court.

Now I am not dealing with the evidence, the very substantial evidence, to support the Board's finding in this. It synthesizes in the fact that there is room for this contract system, that this contract system more than any one thing has upheld the Conference system. I invite your Honors' attention, very careful attention, to the report, the present, current report of the Senate Committee on Interstate Commerce which is printed as Appendix C to our brief. That shows, as I think the Alexander report shows, that Congress did not intend to ban the contract rate system in the past; that system would certainly not [fol. 147] be shot down by the present Congress. The evidence in this case synthesizes that the party most protected by the contract rate system is the small shipper, and this Committee of the Senate so found.

That brings me to my last point, one which I always approach with some trepidation, and that is the question of settled departmental construction. I think it is pretty widely conceded that aging Bourbon whiskey in the wood makes it better whiskey. I have never been able to convince myself that aging of originally erroneous construction of a statute—and shall I say in wooden heads—vested that construction with any particular sanction.

Judge Frank: *Communis error facit jus.*

Mr. Page: Let me say this, your Honor, and I mean it very seriously, and what I am going to say now has something to do with the thesis for which I have probably stood most strenuously all my life. It isn't a monkey wrench with which to paralyze progress. There are times when statutes come up and they must be construed one way or another; they are construed in one way by a Government department, and upon the strength of that construction an industry begins to grow. There are com-

mitments, there are transactions, they are very large investments; and then I say if the construction of that statute is uniformly applied by a Government agency, [fol. 148] known to all parties who might be aggrieved by it, known to the Congress, which should be insulted if its original purposes were being flouted by the agency and nothing is done about it—it is very reasonable to affirm that possible construction, and it may be destructive to adopt another.

Finally, your Honors, let me say this, I trust that having considered, as I know your Honors will, the record before my Board, you will agree with the conclusion which I have reached, which my Board has reached, which the Interstate Commerce Committee of the Senate has reached, and that you will not strike down what indisputably is the principal prop of the Conference system, of which system the Interstate Commerce Committee said that "from the standpoint of national security and from the point of view of the American shipper" it "has paid off in stability of rates and improved quality of service."

Judge Frank: Mr. Page, you are an old hand enough to know that whether judges mutter loudly or softly from the bench does not necessarily indicate what they are going to decide ultimately.

Mr. Page: Oh, certainly.

Judge Frank: So perhaps it is irrelevant but I would [fol. 149] like to ask this question which has been passing through my mind. It may be that the answer to it may be utterly irrelevant. This particular Conference I note is predominantly made up of foreign shipping companies.

Mr. Page: I am glad you brought that up.

Judge Frank: Now it bothers me, and maybe it is none of my concern—it may have no relevancy. Maybe it is a matter for Congress but I am confused by this: if the overwhelming majority of the constituents of the Conference are foreign shipping companies, and they therefore can control the rates here, why is that for the benefit of the shippers in the United States?

Mr. Page: Let me say, as I said before, that I am very glad your Honor brought that up. It was a part of the argument I had intended to make, which I dropped out in the interests of time. It is the control of that very foreign

shipowner which is one of the chief advantages to the line of the Conference system, and that operates, as I say, against the second point which your Honor made now, that is, the foreign carrier can operate at a very much lower rate than the American carrier. It isn't any umbrella over the system. The advantage is that he does not undercut the Conference lines.

Now as to the point that your Honor raises, in the first [fol. 150] place the same vote that would permit him to veto a rate, permits the American lines to prevent him from manipulating the rate. It has to be a practically unanimous thing.

In the second place, he cannot afford to raise the rate too much because if he does, he is faced with the problem of disapproval of the entire system; and, finally, it is in the interests of the small shipper, as is very much pointed out, to have the rate, so long as they do not skyrocket and become oppressive, stable. He is willing—and I am quoting testimony here in the administrative record—to pay a little higher rate, if that rate is a stable rate. And, finally, the last thing that a foreign carrier or a domestic carrier will invite is a rate war, by cutting rates, because that hurts everybody, particularly the carriers, and in the last analysis more than anybody else, hurts the shippers. That is the best answer that I can give you.

Judge Frank: Well, it raises a corollary question—and again it may be utterly irrelevant. On your statement now, the foregoing ships—and it is obvious why—could operate at a profit, at a lower rate. The advantage to the American ship-owning companies is obvious. Therefore, in getting some accord with it, doesn't that mean that here you have a conference made up predominantly of foreign ship-[fol. 151] ping companies; that the American shipper is paying a very high profit to the foreign ship, and therefore from that point of view paying an unreasonable rate?

Mr. Page: Undoubtedly that is true. In other words, $4.00 will yield $3.00 profit to the foreign ship, and $1.00 to the domestic line—that is a fact, but I think it is quite irrelevant to the decision here because those are, first, what Congress decided when it passed the Act, and, second, and I think peculiarly, it is up to the administrative discretion of the Board, because if that would be true, it

can ship unless you ask the Cunard Lines—you can't do it."

Now I suggest that this Court will want to think a long time before it says that Congress ever sanctioned that sort of thing.

Judge Frank: The only question before us is what Congress intended.

Mr. McGovern: I understand that perfectly well.

Judge Frank: We may think it shocking or we may think it is beneficent, but it is a matter of utter indifference.

Mr. McGovern: That is right. You have heard a good deal about the Congressional view. I would like to add one additional thought on the particular question here—and it wasn't talked about. You understand, of course, that there was a full scale, broadly designed subsidy act to take care of a situation where American ships are under subsidy, where they are compelled to subsidize four American lines. If you allow the foreign lines to keep their [fol. 154] rates up to the American level, and you subsidize the whole group—the four Americans as well as the seven foreign ones, I think there is no place in the Congressional scheme for that that you will find.

Judge Frank: I don't know if you are talking about economics in an idle sort of way, but let me ask you this question: suppose you did not have this situation and suppose the efforts on your part and others like it were to break down the Conference, then wouldn't the foreign shipping companies be able to put the American companies out of business?

Mr. McGovern: No, because there is a subsidy act to take care of that very situation. Mind you, the point of this Conference system is to spread the tonnage around among all the members. So take Mr. Page's suggestion, that a $4.00 profit to the foreign lines is equal to a $1.00 profit to the American lines. Assume we are forced into competing. We have four Americans and seven foreign lines. For every dollar of profit that the American shipper gives us, he is going to give three dollars of profit to one of the seven foreign lines. It is just a matter of mathematics, that it is cheaper to subsidize the American lines.

Mr. O'Connor: Your Honor, may I say one word? Ref- [fol. 155] erence here was made to the Senate Committee

Report on Interstate and Foreign Commerce by Mr. Page. As was pointed out in the argument before the Federal Maritime Board, two and a half pages in that report, submitted by Senator Magnuson, came as a surprise to everybody because there was not one bit of evidence taken in any hearings before that Committee. They just proceeded to discuss this question of contracts. They referred to this case pending here. They referred to the Far East case also.

Judge Frank: Is the whole report of that Committee filed?

Mr. Page: I will be glad to leave your Honor a copy.

Mr. O'Connor: Your Honor, it hasn't been distributed. There was no evidence whatsoever submitted before that committee in reference to this subject.

Judge Frank: Well, I am doubtful whether a subsequent Congress can interpret what a previous Congress intended—particularly years ago.

Mr. McGovern: May I just add this, your Honors, that I understood Mr. Page to mention that I unintentionally misled——

Mr. Page: I beg your pardon, I exculpated you.

Mr. McGovern: Well, I will exculpate myself if you don't mind for a moment. The point is that at footnote 3 [fol. 156] the Supreme Court said "the Alexander Committee." Now the Alexander Committee did make the recommendation, your Honor.

Judge Frank: You said "Mr. Alexander" instead of "Alexander Committee."

Mr. McGovern: That is in effect what Mr. Page said.

Mr. Page: I said there wasn't any change at all. He said there was a change. There wasn't, and furthermore, when he put in the language he supported it by the language that he said was changed. I am talking about that, and I cite it in my brief.

Judge Frank: Have you anything further to say, Mr. Hupper?

Mr. Hupper: I think not, your Honor. I might say that I assume the Committee became aware of Mr. O'Connor and what they were doing in this case over in New Jersey. I will say further, with respect to what Mr. McGovern

said, he might have gone a bit further when he referred to the Cunard, and said that the testimony was by Mr. Andrews, the chairman of the Conference, that they mutually accommodated their views and got along splendidly, and the voting power and the unanimous vote never had held up business.

Judge Frank: It isn't like Russia's veto power.

Mr. Hupper: No, not exactly.

[fol. 157] Judge Frank: May I ask, has the Committee's record been formally made a part of the record?

Mr. Page: I understand that Mr. Hupper did——

Mr. Hupper: On Saturday I sent to Judge Kaufman the record, the complete record, including the briefs and exceptions.

Judge Frank: Well, we ought to have some formal offer and make it of record.

Mr Hupper: I offer that complete record in evidence, if your Honors please.

Judge Frank: Is there any objection to that? I assume everybody is delighted to have it in.

Mr. Neville: No objection on the part of the Department of Justice.

Judge Frank: We will take it that everybody is agreeable.

Mr. O'Connor: Your Honor, that record included not only 1400 pages of testimony and the exhibits, but the two reports of the Examiner.

Mr. Hupper: The complete proceedings.

Judge Frank: Yes. I assume the exhibits are all in.

Mr. Hupper: That is what I am informed, and I make that assertion to you.

Mr. Cockrum: Just before the argument is finally con-
[fol. 158] cluded, may it please the Court, if there is any question in the minds of the Court with respect to the right of the United States Department of Agriculture to intervene, I would like to say that the intervention of the Department of Agriculture in this case is pursuant to Section 31 of the Shipping Act of 1916, 46 U.S. Code, 1946 Edition, Section 830 and Section 2323 of the Judicial Code at 28 U.S.C.A. 1948 Edition, 2323. That accords interveners in administrative proceedings the right to intervene as a matter of right.

Judge Frank: Well, that is interesting because I know

there are conflicting decisions in the Supreme Court on that question. Mr. Justice Brandeis wrote one, and someone another one—whether the fact of having the right to intervene in an administrative proceeding gives you the right to intervene in the court. You say Congress has now codified it.

Mr. Cockrum: Well, your Honor——

Judge Frank: The stenographer has it.

Mr. Cockrum: Thank you.

Mr. Hupper: I shall file presently a formal motion to exclude this intervention.

Mr. McGovern: Judge Frank, I hate to impose on the Court at this late hour, but there is still the question of a temporary injunction. As I understand, there is some [fol. 159] question as to whether or not we had a jurisdictional question, by virtue of our failure to get the new order of the Commission before you. We have since filed our amendment, and in our amendment we ask that the temporary injunction be continued to preserve the status quo, pending your final decision, which conceivably might take some time.

Judge Frank: Well, Mr. Hupper will abide by the statement made.

Mr. Hupper: I abide by the promise I made to your Honors, and nothing whatever will be done in respect of the contract rate system before your Honors' decision.

Judge Frank: Mr. Page, I do not know whether your brief covers the question that I think is in the case—my colleagues may not—that is, assuming that you may validly approve an agreement containing a contract-noncontract clause, are there such findings as to this particular clause as to make the Commission's order valid?

Mr. Page: In my opinion, yes.

Judge Frank: Have you discussed that in your brief?

Mr. Page: We have.

Judge Frank: You have. Very good.

Mr. O'Connor: We have discussed in our brief that there is no finding whatsoever in this particular trade, as to the [fol. 160] use of that in this trade—a point made by counsel for the Board itself in his argument before.

Judge Frank: Yes, we are familiar with that.

The Court will stand adjourned.

[fol. 161] IN UNITED STATES DISTRICT COURT

[Title omitted]

CARRIERS' MOTION TO STRIKE ANSWER OF DEPARTMENT OF JUSTICE—December 29, 1950

Sirs:

Please take notice that confirming the oral motion made by carrier defendants on the December 20, 1950 argument before this Court in the above entitled cause said carrier defendants hereby formally move for an order striking out the answer to the amended complaint herein filed by the Department of Justice on behalf of the United States of America and for an order denying the said Department of Justice and the Secretary of Agriculture of the United States the right to appear in opposition to the position taken by the Federal Maritime Board acting for and on behalf of the United States, on the ground that the interests of the United States are lawfully represented by the said Federal Maritime Board and cannot lawfully be contested before this Court by another Department of the Government.

Dated: New York, N. Y., December 29, 1950.

Yours, etc., Burlingham, Veeder, Clark & Hupper, Attorneys for Defendant Carriers, 27 William Street, New York 5, N. Y.

To:

[fol. 162] Hon. Jerome N. Frank, Hon. Sylvester J. Ryan, Hon. Samuel H. Kaufman, United States Court House, Foley Square, New York, N. Y.

William V. Connell, Clerk of the United States District Court, for the Southern District of New York, Foley Square, New York, N. Y.

John J. O'Connor, Esq., and William L. McGovern, Esq., Washington Building, Washington, D. C.

Paul D. Page, Jr., Esq., Solicitor, Federal Maritime Board, Department of Commerce Building, Washington 25, D. C.

The Attorney General, Anti-Trust Division, Department of Justice, Washington, D. C.

Irving H. Saypol, Esq., United States District Attorney, Federal Court House, Foley Square, New York, N. Y.

Charles W. Bucy, Esq., Associate Solicitor, Department of Agriculture, Washington, D. C.

[fol. 163] Certificate of service (omitted in printing).

[fol. 164] In United States District Court

[Title omitted]

Federal Maritime Board Motion for Reconsideration—February 20, 1951

We move that the Court reconsider its opinion issued January 25, 1951 and issue an order remanding this proceeding to the Board for further proceedings as herein suggested.

Respectfully submitted, Paul D. Page, Jr., Solicitor, George F. Galland, Counsel for the Board.

Room 4709, Commerce Building, Washington 25, D. C.

[fol. 165] In United States District Court

[Title omitted]

Defendant Carriers' Motion for Reconsideration—February 20, 1951

Carrier defendants hereby move for reconsideration of this Court's decision of January 25, 1951 and for such action thereon as shall conform to law and justice in the premises.

Carrier respondents and their counsel hold themselves in readiness to attend for further argument in the matter and to assist further otherwise according to such wishes as the Court may indicate.

Respectfully submitted, Burlingham, Veeder, Clark & Hupper, Attorneys for Defendant Carriers, By Roscoe H. Hupper, Burton H. White, Elliott B. Nixon, Jr., Counsel.

Dated, New York, N. Y.

[fol. 166] In United States District Court

[Title omitted]

Opinion—Filed March 21, 1951

Before: Jerome N. Frank, Circuit Judge, and Sylvester J. Ryan and Samuel H. Kaufman, District Judges.

Suit by Isbrandtsen Co., Inc., against the United States and two conferences of steamship carriers and their members to enjoin and set aside so much of an order of the Federal Maritime Board as approves provisions, in conference agreements, for contract and noncontract rates. The Board and the carriers moved to dismiss the complaint.

Motion to dismiss denied. Injunction granted.

John J. O'Connor, (William L. McGovern, of counsel) for plaintiff;

Burlingham, Veeder, Clark & Hupper (Roscoe H. Hupper and Burton H. White, of counsel) for North Atlantic Con-[fol. 167] tinental Freight Conference et al.

Paul D. Page, Jr., and George F. Galland, Washington, D. C. for Federal Maritime Board;

Gareth M. Neville and Robert Murray (Malcolm Hoffman, of counsel) for Department of Justice;

Henry A. Cockrum, for Secretary of Agriculture.

The earlier stage of this litigation is reported in 81 F. Supp. 544. As the statement of facts therein makes clear, Eastbound Conference Agreement No. 4490—from its initial approval by the U. S. Maritime Commission on August 25, 1935, through subsequent amendments as approved by the Commission down to the present—has provided for contract-noncontract rates, although the Conference has not availed itself generally of this power in the past. Agreement No. 7920-1, to which the Westbound Conference is a party, as approved by the Commission on August 24, 1948, similarly undertakes to authorize the use of contract-noncontract rates in the Westbound trade. On October 1, 1948, the defendant carriers sent notices to all known shippers in the North Atlantic trade that effective November 1, 1948, the exclusive patronage contract-noncontract rate system would be inaugurated; the contract rates were to be the

then prevailing freight rates, but shippers who refused to enter into contracts to ship with the conference lines exclusively when those lines could provide transportation, were to be charged noncontract rates to be fixed by an arbitrary differential at a level 20% to 30% higher than the contract rates. On Isbrandtsen's motion, this court granted a temporary injunction, restraining the defendant carriers from instituting the exclusive patronage system, conditioned upon Isbrandtsen's diligent prosecution before the Maritime [fol. 168] Commission of a complaint challenging the validity of these Conference agreements.

Subsequently, Isbrandtsen filed a complaint with the Maritime Commission. The United States (by the Attorney General) and the Secretary of Agriculture intervened in support of the complaint. Evidence was taken before a trial examiner who made two reports. Before the Commission finally acted on these reports, it was abolished.

Its successor, the Federal Maritime Board, thereafter made a decision and order on December 1, 1950, which will be found in 3 F. M. B. ___, approving the contract-noncontract rate provisions of the conference agreements and dismissing Isbrandtsen's complaint.

Isbrandtsen then filed in this court an amended complaint, which referred to the Board's order and asked that it be enjoined. The United States (by the Attorney General) appeared, and the Secretary of Agriculture was permitted to intervene.[1] They argued in support of the injunction. The Board and the conference carriers appeared, moved to dismiss the suit, and argued in opposition to the proposed injunction.

Frank, C. J., delivered the opinion of the court.

1. The plaintiff, the Attorney General, and the Secretary of Agriculture contend that in no circumstances can a dual-

[1] As to the appearance by the Attorney General, see 46 U. S. C. Sec. 830, 28 U. S. C. Secs. 2322, 2323. As to the intervention of the Secretary of of Agriculture, see 7 U. S. C. A. Sec. 1622 (j); 5 U. S. C. A. Secs. 1005 (a) and 1009 (a); cf. Associated Industries v. Ickes, 134 F. (2d) 694, 711-712 (C. A. 2).

rate provision (i.e., an exclusive patronage, or dual-rate, or contract-noncontract provision) in a conference agreement be valid under 46 U. S. C. Sec. 812, Third.[2] We need not, and do not, decide whether or not that contention is sound.[3] For the purposes of this decision, we shall assume that, as the Board contends, in some circumstances the Board may, [fols. 169-170] pursuant to 46 U. S. C. Sec. 814,[4] approve a conference agreement containing such a provision. For even so, we think that, on the record now before us, the dual-rate provision in each of these conference agreements is invalid.

2. In effect, the Board's position is that such a provision may be authorized under Sec. 814 unless the Board finds that it is "unjustly discriminatory or unfair as between carriers,

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[2] It reads: "No common carrier by water shall, directly or indirectly, . . . Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason."

[3] In an Appendix to this opinion, Judge Frank has set forth some of the arguments for and against that position. Judges Kaufman and Ryan do not participate in that Appendix.

[4] It reads:

"Every common carrier by water, or other person subject to this chapter, shall file immediately with the commission a true copy . . . of every agreement, with another such carrier or other person subject to this chapter, . . . to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing or destroying competition; pooling or apportioning earnings, losses or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in

shippers, exporters, importers, or ports."[5] But the Board has made a finding, and the evidence before the Examiner shows that the announced contract and noncontract rates of the conference carriers, acting pursuant to the dual-rate provisions of the conference agreements, were such that the spread between those rates was arbitrary. The conference carriers thus interpreted the dual-rate provisions of the conference agreement as authorized such an arbitrary spread, and the Board held valid the dual-rate provisions thus interpreted.

The effect of the Board's order is to approve the dual-rate provisions which permit unreasonable spreads between the contract and noncontract rates. We hold such dual-rate provisions to be unlawfully discriminatory between shippers, and we therefore set aside the Board's order.

3. In Swayne & Hoyt Ltd. v. United States, 300 U. S. 297, 303, the Court said that a differential, pursuant to a conference agreement, between contract and noncontract rates was "prima facie discriminatory since the two rates were

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any manner providing for an exclusive, preferential, or cooperative working arangement. . . .

"The commission may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors to operate to the detriment of the commerce of the United States, or to be in violation of this chapter, and shall approve all other agreements, modifications, or cancellations. . . .

"All agreements, modifications, or cancellations made after the organization of the commission shall be lawful only when and as long as approved by the commission, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

"Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of sections 1-11 and 15 of Title 15, and amendments and Acts supplementary thereto. . . ."

[5] We discuss infra this interpretation of Sec. 814.

charged for identical services and facilities. . . ."[6] As the Board, in justifying its decision, refers to decisions of [fols. 171-173] its predecessors,[7] it is well to note that in Rawleigh v. Stoomvart, 1 U. S. S. B. 285, 293, the Shipping Board said that a contract-noncontract clause in a conference agreement would violate the statute "where the spread is such in amount as to constitute unlawfulness."[8]

4. Here, then, the complainant, before the Board, made out a case of unlawful discrimination by presenting the agreements containing the dual-rate provisions together with proof of the unreasonableness of the spread between the announced contract and noncontract rates. For a witness called by the carriers, Andrews, Secretary since 1935 of one of the two Conferences,[9] testified on cross-examination, that "generally the non-contract rates were fixed at a differential of approximately 20% above the contract rates" and that: "I don't think the making of rates by differential is a proper basis, for that is an arbitrary basis."[10]

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[6] Cf. Atlantic Refining Co. v. Ellerman & Bucknalls S. S. Co., 1 U. S. S. B. 242, 249-259. Cf. I. C. C. 1. Mechling, 330 U. S. 567; Alabama Great Southern R. Co. et al v. U. S, 340 U. S. 216 at 227.

[7] (a) The Shipping Act, in 1916, established the United States Shipping Board, and gave it powers conferred by many sections of that Act. 46 U. S. C. Sec. 801 et seq.

(b) Executive Order No. 6166 dated June 10, 1933, abolished the Board and transferred its powers to the Department of Commerce.

(c) The Act of June 29, 1936, 49 Stat. 1987, transferred those powers to the United States Maritime Commission.

(d) The President, by Reorganization Plan No. 21 of 1950, with the acquiescence of Congress created the Federal Maritime Board and transferred to it certain powers of the United States Maritime Commission, including those set forth in 46 U. S. C. Secs. 812-819, 821-832.

[8] This case is further discussed, infra.

[9] He is Secretary of the North Atlantic Continental Freight Conference.

[10] His testimony in full on this point is as follows:

"Q. Mr. Andrews, in establishing your contracts, (sic) non-contract rate system, it is my understanding that it was

No evidence was offered contradicting this statement of the arbitrary nature of the differential.

The trial examiner made an initial report to the effect that the dual rate provisions were not illegal per se. After receiving this report, the Commission (later superseded by the Board) issued a supplemental order returning the case to the examiner with directions to make findings as to whether the exclusive-contract provisions of this case "(1)

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proposed to continue in effect after November 1st, the tariff that had been largely in existence prior to that date, but that after November 1st the rates in the present existing tariff would then become the contract rates, is that correct?

"A. Yes. We were establishing as a contract basis the tariff rates which had been in effect for some time.

"Q. How did you calculate what the non-contract rates would be? Were they arranged on a basis pretty much——

"A. (Interrupting) We followed the same prewar practice that had been in effect in most of the trans-Atlantic trades, of substantially 20 per cent over the contract basis, rounding the figures out to the nearest nickel.

"Q. In other words, in general terms, the non-contract rates were going to be fixed on a differential of approximately 20 per cent above the contract level?

"A. That has been the basis pre-war, and the basis in effect to all of the European freight where there is a contract system.

"Q. Well, now, is it your own view that the rates which are fixed on a differential basis, either above or below other rates, are reasonable?

"A. We didn't fix them on a, so to speak, differential basis. We fixed them at specific rates in the tariff.

"Q. I understand that, but I also understand that generally the non-contract rates were fixed at a differential of approximately 20 per cent above the contract rates?

"A. That is correct.

"Q. And I am asking you whether in your judgment the fixing of any rate scale at any time on a differential basis is a reasonable method of making rates?

"A. I don't think the making of rates by differential is a proper basis, for that is an arbitrary basis."

are unjustly discriminatory or unfair as between . . . shippers, or (2) operate to the detriment of the commerce of the United States, or (3) are in violation of the provisions of the Shipping Act. . . ." The order also directed the examiner to rule upon the proposed findings of fact submitted by the complainant.[11]

[fols. 174-176] The examiner in his second report, pursuant to this order, found, as proposed by complainant, that the noncontract rates "were fixed by means of an arbitrary differential at a level 20% to 30% higher than the currently existing scale."[12] (As the testimony quoted in footnote 10 shows, the announced contract rates were fixed by adopting that scale.) The Board did not in precise terms adopt this finding. But, in oral argument before the court, counsel for the Board construed its decision as accepting the examiner's findings in so far as they were not inconsistent with its own report. There is nothing in the Board's report inconsistent with this finding of the examiner.[13] Accordingly, we conclude that the Board made this finding its own.

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[11] See the Commission's Rule, 46 C. F. R. 201.191.

[12] This finding reads in full as follows: "Shippers were informed hat failure to sign such a contract would entail application to their shipments by respondent's lines after November 1, 1948 of noncontract rates which were fixed by means of an arbitrary differential at a level 20% to 30% higher than the currently existing scale."

[13] Moreover, the Board in its brief filed with us, candidly interprets the Board's decision as holding, in effect, that the purpose of the dual-rate provisions was, if possible, to bring about a condition in which an independent carrier would be compelled (through loss or threatened loss of profits) either to join the Conference or go out of business. The Board's brief says: "The contract system should be frankly recognized as a device tending towards the monopolization of ocean commerce in particular trades by the members, collectively, of conferences which serve those trades. We use the word 'monopolization' with no ideological overtones, but merely in its dictionary sense, which is the obtaining or assumption of 'exclusive possession or control.' Whether the contract system in a particular case ac-

[fols. 177-180] in the face of the specific finding of a "basic" fact, cannot stand up.[15] Dual rate provisions which authorize arbitrary differentials are obviously not

plaint proceedings involved in the instant case. Cf. North Carolina v. United States, 325 U. S. 507, 517. Were that argument accepted, it might then be argued that the order made in those proceedings is subject to the provision of 5 U. S. C. Sec. 1006(c), so that the burden of proving the validity of the agreements was on the proponent of the order, i.e., the carriers. See also the Board's rule as to the burden of proof, 46 C. F. R. Sec. 201.122.

After approvals of the conference agreements in suit, the Board's predecessor, the Maritime Commission, promulgated an order, effective September 8, 1949, which is still in force and which provides as follows: When a proposed agreement is filed, the Board publishes a notice thereof, which advises interested parties that, within twenty days, they may request a hearing. The Board may then, in its discretion, order the holding of a hearing. If such a hearing is held, the burden of proof is obviously on the proponents of the approval. Of the Commission's order of September 8, 1949, counsel for the Board, in a letter to this court, stated: "General Manager's Order No. 106 was not published in the Federal Register inasmuch as it constituted a direction to the Commission's (now the Board's) staff on internal procedure, and in particular as to the manner in which notice should be given to the public." Cf. Newman, "Government and Ignorance—Progress Report on Publication of Federal Regulations", 63 Harvard L. R. 929.

But any arguments to the effect that the carriers here had the burden are academic since, if plaintiff here had the burden, plaintiff discharged it.

[15] Baltimore & O. R. Co. v. United States, 22 F. Supp. 533, 537 (per L. Hand, J.); Florida v. United States, 282 U. S. 194, 215; United States v. Caroline Carriers Corp., 315 U. S. 475, 489; United States v. Pierce Auto Lines, 327 U. S. 515, 533; United States v. Baltimore & O. R. Co. 293 U. S. 454, 462; United States v. Chicago, M. St. P. & P. R. Co., 294 U. S. 499, 506, 510-511; see also 5 U. S. C. A. Sec. 1007(b).

A discrepancy between the special finding of a basic fact and a finding of an ultimate fact may perhaps be compared

reasonable.[16] For arbitrary conduct means unreasoned or unreasonable conduct, i.e., without reference to an adequate determining principle or standard;[17] and unreasonable discrimination is the equivalent of "unjust" discrimination.[18] Consequently, here the rates proposed to be charged shippers who do not sign contracts are unreason-

with a discrepancy between a jury's answers to interrogatories and its general verdict. Cf. Orvis v. Higgins, 180 F. (2d) 537, 539 (C. A. 2), as to the resemblance between an administrative finding and a jury's special verdict.

[16] The plaintiff urges that the contract rates themselves are unreasonable since they are the rates established during World War II to cover unusual costs then existing. We need not, and do not, consider this contention.

In this connection, however, there may be noted Lough v. Outerbridge, 143 N. Y. 271, on which the Board relied in interpreting the statute. There, in 1894, before the statute, the court held that, in special circumstances, it was lawful for a water-carrier to grant lower rates to shippers making exclusive patronage contracts. But the court based its decision on the fact that there was an express finding by the trial court that the non-contract rates were reasonable, so that there was "no refusal to carry for a reasonable compensation," and no "detriment to the public by exacting unreasonable charges." The court said: "If the general rates are reasonable, a deviation from the standard by the carrier in favor of particular customers, for special reasons, not applicable to the whole public, does not furnish to parties not similarly situated any just ground for complaint. . . . Special favors in the form of reduced rates to particular customers may form an element in the inquiry whether, as a matter of fact, the standard rates are reasonable or otherwise."

[17] See e.g., United States v. Carmack, 329 U. S. 230, 243, and note 14; see also Zweig v. United States, 60 F. Supp. 785; In re Rogers, 47 F. Supp. 265, 266; United States v. Lotempio, 58 F. (2d) 358, 360; Fox Film Corp. v. Trumbull, 7 F. (2d) 715, 727.

[18] See, e.g., Mitchell v. United States, 313 U. S. 80, 94, 97; National Surety Corp. v. Mullins, 262 Ky. 465, 90 S. W. (2d) 707, 708.

ably, and therefore unjustly, discriminatory; and the dual-rate provisions which permit such rates are invalid.

6. The Board's predecessors in some of their decisions have said that the validity of a dual-rate provision in a conference agreement is a question which must be determined by the facts in each case.[19] It may be urged, however, that some of those decisions contain intimations that sufficient facts exist to validate such a provision, as part of a conference agreement, if it appears merely that any carrier may join the conference and that the dual-rate provision will create "stability" by tending to drive competing non-conference carriers into the conference or out of business.[20] It is by no means clear that such administrative

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[19] Gulf International Contract Rates, 1 U. S. S. B., 524, 530; Phelps Bros. & Co., Inc. v. Cosulich-Societa, etc. 1 U. S. M. C. 634, 639.

[20] How much stability the particular dual-rate provisions in this case would furnish has been questioned. Without passing upon that question, we note the following: The examiner found, "With regard to the respondent carriers' obligations under the contract, the contract provided that respondents agreed to furnish the merchant at contract rates 'space in such vessels as they may respectively load at said loading ports for transportation and dispatch at the ports desired, provided that suitable unbooked space is available therein when the merchant makes application.'" This apparently means that, to a shipper who signs an exclusive patronage contract, the conference carriers agree to supply no transportation facilities, except as the conference members may see fit to provide them from time to time. Andrews, called by the carriers as a witness in the Board's hearing, testified that, if the conference carriers provided a contract shipper with no space, the contracting shipper would be free to ship via an independent, non-conference, carrier. But the very purpose of the dual-rate provision is, if possible, to compel independent shippers to join the conference or go out of business. If, then, the dual-rate provision is successful, there will be no independent carriers. In that event, a shipper who signs a contract will apparently re-

interpretations, even if unambiguous, uniform and consistent, would be tenable, in the light of the provision in Sec. 814 as to unjustly discriminating provisions in conference agreements.[21] But we need not deal with that question. For (perhaps due to the way in which the statutory powers have been frequently shifted from one agency to another) the decisions of the Board (none of which ap-

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ceive only such carrying space as the conference members choose to supply. Plaintiff argues that this shows that the dual-rate provision will not assure "stability" to shippers. The Board, in its opinion, intimated at one point that shippers endorsed the dual-rate provisions but, at another point, said: "The conferences realize that . . . something more than voluntary shipper cooperation must be agreed to. The dual-rate system is the device which has been developed for that purpose." It added: "Shippers have testified in this case that they deem the stability of rates and regularity of service which a conference can offer are worth the price measured in terms of freight rates." However, two private shippers intervened in the Board's proceeding to protest against the rual rate provisions in the agreements in suit. So, too, did the Secretary of Agriculture, as the representative of many other shippers; see infra.

[21] See, e.g., Neuberger v. Commissioner, 311 U. S. 83, 89; Koshland v. Helvering, 298 U. S. 441, 447; Alaska Steamship Co. v. United States, 290 U. S. 256, 264; United States v. Missouri Pac. R. Co., 278 U. S. 269, 280; United States v. Johnson, 173 U. S. 363, 378; Iselin v. United States, 270 U. S. 245, 251; United States v. Tanner, 147 U. S. 661, 663; United States v. Graham, 110 U. S. 219, 221; Webster v. Luther, 163 U. S. 331, 342. See annotations in 73 U. S. Law Ed. 339-343 and 84 U. S. Law Ed. 43-46.

proving a dual-rate provision has heretofore come to court) have lacked uniformity and consistency;[22] and, in such

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[22] In Eden Mining Co. v. Bluefields Fruit & S. S. Co. 1 U. S. S. B. 41, decided in 1922, not long after the enactment of the statute, the Shipping Board held it unlawful as "unjustly discriminatory," for a carrier in foreign commerce to use the contract-noncontract device. Citing Secs. 16 and 17 (46 U. S. C. Secs. 815 and 816), the Shipping Board said: "It is evident that the purpose of Congress in enacting these provisions of the statute was to impose upon common carriers within the purview thereof the duty of charging uniform rates to all shippers receiving a similar transportation service. The duty of the respondent under these sections was to serve the public impartially, and we think the language used in W. U. Tel. Co. v. Call Pub. Co., 181 U. S. 92, in dealing with a similar statute, is entirely applicable to the case in hand. The court there said: 'All individuals have equal rights both in respect to service and charges. Of course such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon.' But that principle of equality does forbid any difference in charge which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference and can not be so great as to produce an unjust discrimination.' From the facts of record in the case before us it is manifest that the transportation service furnished the complainants and contract shippers was in all respects identical." The Board also said: "It should be here remarked, however, that we do not decide whether under that act the according of lower rates to those shippers who contract to confine their shipments to a certain carrier or carriers are lawful when based upon regularity of consignments, number of shipments, or quantity of merchandise furnished for transportation, as in the instant case no such question is presented for determination."

Some eleven years later, in Rawleigh v. Stoomvart, 1 U. S. S. B. 285, 290 (1933), it was indicated that the Eden rule applied exclusively to the case of a single carrier and was inapplicable to a conference agreement. However, some

[fols. 181-187] circumstances, administrative interpretations have little weight.[23]

What is even more to the point, in each of the cases in which such intimations occurred, there was absent any specific finding, such as we have here, that the spread between the contract and non-contract rates, permitted by the dual-rate provisions, was arbitrary. As previously noted, in Rawleigh v. Stoomvart, 1 U. S. S. B. 285, the Shipping Board said that a dual-rate provision in a conference agreement is invalid if it authorizes a spread which is unlawful. In no subsequent decision by the Board, or by any of its predecessors, has that ruling been rejected. In the Rawleigh case, however, the Shipping Board sustained such a provision without considering the spread. But it did so only because, as the Board's opinion (p. 288) discloses, there the complainant had explicitly stated: "The question of rates from our viewpoint . . ., or the spread between them, is entirely immaterial and outside the scope

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two years later, in Intercoastal Investigation, 1 U. S. S. B. 400, 452 (1935), the Shipping Board Bureau rejected this distinction. Then, some four years after that, in Contract Routing Restrictions, 2 U. S. M. C. 220, 226-227 (1939), the Maritime Commission cited the Eden case as applicable to a conference agreement. But now, eleven years after that case, the Federal Maritime Board, in the instant case, once more indicates that the Eden rule applies to the case of a single carrier only.

Again, Menacho v. Ward, 27 Fed. 529, has been variously treated: It was relied upon in the Eden case, supra (1922); treated as having been made irrelevant by the statute in Pacific Coast European Conference, 3 U. S. M. C. 11, 15-16 (1947); and, in the instant case, cited by the Board (1950) as authority in interpreting the statute.

[23] United States v. Missouri Pac. R. Co., 278 U. S. 269, 280; Burnet v. Chicago Portrait Co., 285 U. S. 1, 16; Alexander v. Cosden Co., 290 U. S. 484, 498; Estate of Sanford v. Commissioner, 308 U. S. 39, 49; American Surety Co. v. Bethlehem Bank, 314 U. S. 314, 319; United States v. Healey, 160 U. S. 136, 145; Merritt v. Cameron, 137 U. S. 542, 551-552. See annotations in 73 U. S. Law Ed. 345-349, and 84 U. S. Law Ed. 47-50.

of this proceeding." For that reason, the Board held (pp. 288, 293) that that particular proceeding "does not present for determination anything other than the lawfulness in the trade concerned of the contract-noncontract rate practice itself, apart from and independent of any factor of quantum of spread," and "involves no issue respecting anything other than the lawfulness of the contract rate practice per se." But the instant case is in that respect clearly distinguishable: Here the complaint proved before the Board that the spread was not reasonable; the Board, by its supplemental order, directed the examiner to rule upon findings of fact proposed by the complainant; the examiner, in conformity with that direction, explicitly [fols. 188-189] found that the differential between the rates was arbitrary; and the Board has adopted that finding.

7. It might conceivably be suggested that, nevertheless, the Board properly ignored the unreasonableness of the spread, authorized by the dual-rate provisions, because plaintiff, before the Board, attacked the dual-rate provisions not for such unreasonableness, but on the sole ground that they are unlawful per se under Sec. 812, Third. However, plaintiff, before the Board, did inject the issue of the authorized spread by requesting the finding as to the arbitrariness of the differential.

There is this further consideration. In United States Navigation Co. v. Cunard S. S. Co., 50 F. (2d) 83, 89 (C. A. 2), the court, interpreting Sec. 814, said: "The Board shall approve such agreements as it does not find 'to be unjustly discriminatory or unfair.'" In oral argument before us, counsel for the Board seemed to suggest a different interpretation, i.e., that at least in initially approving a conference agreement under Sec. 814, the Board has no obligation whatever to inquire into unjust or unfair discrimination; need make no finding on that score; and, only if it does choose to inquire and also does choose to find unjust or unfair discrimination, need it disapprove or modify the agreement on that ground. This is a somewhat surprising contention, to be contrasted with the following views of Commissioner Aitchison of the Interstate Commerce Commission concerning the obligations of administrative agencies: "They are not expected merely to call balls and strikes, or to weigh the evidence submitted

by the parties and let the scales tip as they will. The agency does not do its duty when it merely decides upon a poor or nonrepresentative record. As the sole representative of the public, which is a third party in these proceedings, the agency owes the duty to investigate all the pertinent facts, and to see that they are adduced when the parties have not put them in. . . . The agency must always act upon the record made, and if that is not sufficient, it should see the record is supplemented before it acts. It must always preserve the elements of fair play, but it is not fair play for it to create an injustice, instead of remedying one, by omitting to inform itself and by acting ignorantly when intelligent action is possible. . . .[24]

Even if, however, the interpretation seemingly suggested by the Board's counsel were correct, it would have no pertinence in this case. For it seems plain that here the Board, in a complaint proceeding under 46 U. S. C. Sec. 821, having actually found the authorized spread arbitrary, had the duty, of its own motion, to hold the dual-rate provisions unlawful, because they authorize such

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[24] Senate Subcommittee Hearings on S.674, S.675 and S.918, April 29, 1941, pp. 465-466.

The Supreme Court has admonished that, in court review of orders of Boards and Commissions, the public interest looms large. See F. C. C. v. Sanders Bros. Radio Station, 309 U. S. 470, 475; Scripps-Howard Radio v. F. C. C., 316 U. S. 4; F. C. C. v. N. B. C., 319 U. S. 239, 247; Ashbacker Radio Corp. v. F. C. C., 326 U. S. 327. See also W. R. Grace & Co. v. Civil Aeronautics Board, 154 F. (2d) 271, 286 (C. A. 2); Associated Industries v. Ickes, 134 F. (2d) 694 (C. A. 2).

a spread. See Baltimore & O. R. Co. v. United States, 22 F. Supp. 533, 537 (per Judge L. Hand).[25]

Nor can it be successfully maintained that plaintiff's complaint, in this court, is not broad enough to support our decision.[26]

8. Were it urged that the complaint, as a carrier, has no standing to complain of unlawful discrimination between shippers, the short answer (all else aside) would be that the Department of Agriculture, an intervenor in the Board's proceeding, is itself a shipper, and spoke for [fols. 190-192] many other shippers of agricultural commodities. The Agricultural Marketing Act of 1946, 7 U. S. C. 946 ed. Sec. 1622(j), authorizes the Secretary of Agriculture "to assist in improving transportation services and facilities and in obtaining equitable and reasonable transporation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to . . . the Maritime Commission . . . with respect to rates, charges, tariffs, practices and services . . ." An expert of the Department of Agriculture gave testimony before the examiner showing the movement of 1,027,253 tons of a wide range of agricultural commodities in the trade here involved, from July 1, 1947, to June 30, 1948; and that, for the shipments on which the

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[25] In his initial report, the trial examiner pointed out "certain possible violations of law" including one instance when, "at the request of the Automobile Manufacturers Association, the effective date of the contract period in the eastbound trade was postponed for the Association's members from November 1 to December 31, 1948, and the members were to get the lower contract rates during that period even though they had not signed contracts, a possible unwarranted discrimination against all other shippers." He made no recommendation with respect to this occurrence, nor did the Board, as he suggested, "see fit to investigate it," or even discuss it.

[26] F. R. C. P. 54(c); Truth Seeker Co. v. Durning, 147 F. (2d) 54, 56 (C. A. 2); Matorose v. Moore McCormack Lines, 158 F. (2d) 631, 633 (C. A. 2); Gins v. Mauser Plumbing Supply Co., 148 F. (2d) 974, 976 (C. A. 2).

ocean rates on the comomdities were named in cents per one hundred pounds, freight charges of $5,323,778.50, based on the Conferences' present rates or proposed exclusive patronage contract rates would be assessed as against $6,406,671.50, based on their proposed higher noncontract rates, or a difference of $1,082,893. This tonnage represents approximately 10 percent of the total products of agriculture exported annually.[27]

9. It has been argued that, since the dual-rate provisions authorize an arbitrary spread and are thus unjustly discriminatory, they also fall foul of the third subdivision of Sec. 812, prohibiting retaliation by a carrier because a shipper has "patronized any other carrier". But, for reasons previously canvassed, we think it unnecessary to decide that issue.

10. To summarize: The conference carriers, acting pursuant to the dual-rate provisions, proposed to put into [fols. 193-194] effect contract and noncontract rates with a spread between the two, which spread the Board found to be arbitrary. We decide that the dual-rate provisions, since they permit an arbitrary spread, are invalid. Our order will therefore provide that the Board's order be set aside, and that the defendants be enjoined from acting pursuant to the dual-rate provisions.

The motions to dismiss are denied. A final injunction will issue.

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[27] The Department of Agriculture owns or controls great quantities of farm products, substantial portions of which have been and will continue to be exported through our North Atlantic ports to Belgium, The Netherlands and Germany. This direct interest of the Secretary has been especially vital in recent years because of the far-flung rehabilitation programs of the Federal Government under the Economic Cooperation Act and the Military Government Relief in Occupied Areas. The Department is one of the largest shippers in foreign commerce.

This opinion is hereby substituted for this court's earlier opinion, dated January 25, 1951, which is hereby recalled and vacated.

Jerome N. Frank, Circuit Judge, Sylvester J. Ryan, District Judge, Samuel H. Kaufman, District Judge.

March 20th, 1951.

[fol. 195] APPENDIX BY JUDGE FRANK

The briefs and oral arguments were devoted principally to contentions concerning the meaning and applicability of 8 U. S. C. Sec. 812(3),[28] but the court has reached its decision without reference to that subsection.

I deem it desirable, however, to set forth, in this appendix, the arguments, pro and con, as to that subsection, which were advanced by the parties before this court or which occurred to any members of this court, but *without expressing an opinion as to the cogency of those arguments.* See W. R. Grace Co. v. Civil Aeronautics Board, 154 F. (2d) 271, 282-285 (C. A. 2), for a previous use of such an appendix. My colleagues, Judges Ryan and Kaufman, regard such an appendix as superfluous and undesirable. I therefore take the sole responsibility for it.

[fol. 196] 1. The Board argues that Sec. 812(3) must be read in the light of the paramount purpose of Sec. 814. The Board maintains that Sec. 814 authorizes carriers to enter into a conference agreement (a) which obliterates competition in rates among those carriers who become parties to the agreement and (b) which also contains provisions having the effect or tendency of destroying outside competition, i.e., competition between (1) the conference carriers as a group and (2) independent carriers, by forcing the independents either to join the conference or (sooner or later) to go out of business. In other words, Congress in Sec. 814 authorized combinations which can

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[28] For convenience, the subdivisions of Sec. 812 are cited as (1), (2), (3) and (4).

coerce all carriers (in any given trade) into accepting non-competitive rates.[29]

In support of this interpretation, there is cited the language of Sec. 814 that carriers' agreements may provide for "destroying competition," and exempting those making such agreements from the anti-trust laws. It is then argued that an interpretation of Sec. 812 which would deny a conference the use of any devices whatever that destroy rate competition by independent carriers would nullify the intent of Sec. 814. Accordingly, as exclusive patronage contracts with shippers help to carry out that intent, Sec. 812(3) must be construed as not forbidding a conference to use such contracts.

2. The following answers to these arguments have been urged:

Repeals by implication of statutes—especially of the anti-trust laws—and not favored. See U. S. v. Borden, 308 U. S. 188, 198-199.[30] The purpose of Sec. 814 was merely to exempt from the anti-trust laws agreements destroying, [fols. 197-198] or substantially reducing, competition among those carriers who choose to join a conference. The first three subdivisions of Sec. 812 were intended (inter alia) to prohibit the use of all methods which would coerce an independent carrier, under threat of financial ruin, to become a member of a conference, thereby destroying rate competition between (1) independents and (2) the conference, to the grave injury of American shippers. This appears from the following:

Section 812(1) forbids "deferred rebates"; Sec. 812(2) forbids "fighting ships" to be used "for the purpose of excluding, preventing or reducing competition by driving another carrier out of said trade"; Sec. 812(3) forbids any carrier to "retaliate" against any shipper either "by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating

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[29] See footnote 13, quoting from the Board's brief.

[30] There the Court, rejecting a contention that a part of the anti-trust laws had been repealed by implication, said: "We cannot believe that Congress intended to create 'so great a breach in historic remedies and sanctions.'"

or unfair methods because such shipper has patronized any other carier . . ." Since the admitted tendency or effect of exclusive patronage contract is fully as deadly as deferred rebates or fighting ships in wiping out competition between a conference and independents, Congress could not have intended to authorize a conference to use such contracts. The Board's interpretation of Sec. 812(3) would poke a wide hole in the dike erected by Congress against the creation of cartels free of outside competition. That interpretation would work a repeal, by mere implication, of the anti-trust laws, far beyond the express and limited repeal contained in Sec. 814.

Competition is cherished by the common law (and safeguarded by the anti-trust laws) in large part for the purpose of protecting consumers from unreasonably high [fol. 199] prices or rates likely to result from monopoly or unreasonable restraint of trade. Therefore, whenever any of our governments has, by statute, insulated anyone from all competition in the same industry—as, for example by a grant of an exclusive franchise—it has coupled the grant with the establishment—as a substitute for competition as a price-regulator—of a governmental agency empowered to fix reasonable maximum prices or rates. A legally sanctioned complete monopoly, minus such regulation, is virtually unprecedented.[31]

This traditional policy of rate regulation was fully recognized by the House Committee which in 1914, in the so-called Alexander Report,[32] made recommendations that led to the Shipping Act of 1916. That Report (pp. 420-421) recommended that the Interstate Commerce Commission be authorized to investigate the rates of all carriers, including those in foreign commerce, and to order their "rates changed if convinced that the rate under consideration is unreasonably high." The Report explained this recommendation by saying that "the Committee feels that in the absence of governmental control steamship combinations may in many instances have it within their power

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[31] Patents, copyrights and trade-names are unusual and exceptional.

[32] H. R. Doc. 805, 63d Cong., 2d Sess.

criminatory" is preceded by "unjustly". Consequently, Sec. 812(3) forbids any carrier to resort to any discrimination whatever—whether or not "unjust" or "undue" or "unreasonable"—as against a shipper for patronizing another carrier. Wherefore, exclusive patronage contracts are unlawful per se.

See Baltimore & O. R. Co. v. United States, 22 F. Supp. 533, 538, where Judge Learned Hand said: "Subdivision 1, as amended, 49 U. S. C. A. Sec. 3(1), generally forbids a carrier to discriminate unduly or unreasonably in any way between one person, 'locality, port, port district, gateway, transit point' and another. It does not, and could not, impose a peremptory prohibition in such cases; the discrimination must be 'undue or unreasonable'; discriminations are not per se unlawful, their occasion must be examined. That is not true of discriminations under subdivision three, which *is* peremptory, and admits no excuses; carriers must not discriminate in rates between connecting lines."[33]

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[33] The Court was interpreting 49 U. S. C. Sec. 3 which read as follows:

"(1) It shall be unlawful for any common carrier subject to the provisions of this Act to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic . . . or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

"(2) No carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the commission may from time to time prescribe to govern the settlement of all such rates and charges and to prevent unjust discrimination: Provided, That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for

See also Hocking Valley R. Co. v. U. S., 210 Fed. 735, 745 (C. A. 6); L. & N. R. Co. v. Mottley, 219 U. S. 467, 478.

If the Shipping Act were given the Board's interpretation, it would probably be unconstitutional. For then it would confer upon a conference, a private cartel, the power to exclude an independent carrier from trade unless the independent joins the conference and accepts its terms; this would be the equivalent of granting a private cartel the power to issue certificates of convenience and neces-

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the United States . . . for any State or Territory or political subdivision thereof, or for the District of Columbia. . . .

"(3) All carriers engaged in the transportation of passengers or property, subject to the provision of this chapter, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper. . . ."

Referring to the last clause of 49 U. S. C. Sec. 3(3) which read "Or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper," the court said: "The discrimination here in question was not really between carriers, but between localities. Of course it is literally true that there cannot be a discrimination between localities without an incidental discrimination between connecting carriers where the localities can only be reached by connecting lines; but for that very reason we should avoid any redundancy. There is some confirmation of this in the last clause of subdivision three, because, although the adverb, 'unduly,' is there introduced, the prohibition appeared to have in mind alternative routes between the same termini. That is what we think this part of subdivision three covers; no general inquiry is necessary beyond that of the two alternative routes. We do not believe that the problem of comparative rates between two localities can be so simplified."

[fols. 203-205] sity, with no statutory criteria to guide their issuance. The statute so construed would, at least, verge on *unconstitutionality*. A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495, 537; cf. Fashion Organizators' Guild v. F. T. C., 312 U. S. 457, 465. Such an interpretation should, if possible, be avoided.

3. To these arguments, the Board replies thus:

(a) The Board has power to prescribe maximum reasonable rates for conferences of carriers engaged in foreign commerce. For, under Sec. 814, the Board may disapprove, cancel or modify any conference agreement if the Board finds the agreement "to operate to the detriment of the commerce of the United States." The Board's predecessors—once in 1935 and twice in 1939—have stated, in opinions, that this language confers power to withdraw approval of conference agreements among carriers engaged in foreign commerce, upon a showing that a conference rate is unreasonably high, since such a rate is detrimental to the commerce of the United States.[34]

(b) If Sec. 812(3) applies at all to conference agreements, the word "discriminating" in that section must be read as "unjustly discriminating," in order to harmonize it with Sec. 814.

(c) But Sec. 812(3) is inapplicable to agreements under Sec. 814. For Sec. 814 authorizes agreements "giving special rates." Moreover, while Sec. 812(1) forbids "deferred rebates," including those by a "combination," and Sec. 812(2) prohibits the use of a "fighting ship either

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[34] See Edmund Weil v. Italian Line "Italia," 1 U. S. S. B. 395 (1935); In the Matter of Rates, Charges, Rules, Regulations, and Practices of the Common Carriers Parties to the Pacific Coast River Plate Brazil Conference Agreement, 2 U. S. M. C. 28 (1939); Pacific Forest Industries v. Blue Star Line, Ltd., 2 U. S. M. C. 54 (1939).

The Board's predecessors have held that 46 U. S. C. Sec. 817 is inapplicable to a foreign commerce conference. See Boston Wool Trade Ass'n. v. General Steamship Co., 1 U. S. S. B. 49, 51 (1923); cf. Seas Shipping Co. v. American-South African Lines, 1 U. S. S. B. 568, 579 (1936).

separately or in conjunction with any other carrier," Sec. 812(3) does not similarly refer to joint action.

[fols. 206-207] (d) In any event, the word "retaliate" in Sec. 812(3) means solely conduct that penalizes a shipper for past conduct in patronizing another carrier. The word must be read in the light of Menacho v. Ward, 27 F. 529 (1886) which held illegal increased rates to shippers because they had previously shipped by a competing carrier. Section 812(3) is a codification of the ruling in that case. Moreover, the non-contract rate here is not a retaliation, since it is charged a shipper who does not sign a contract, regardless of whether or not he patronizes an independent carrier.

(e) Although the Alexander Report recognized the then prevailing use of "deferred rebates" and of "fighting ships," as well as of exclusive patronage contracts, nevertheless the Report recommended the prohibition of the first two practices but did not recommend prohibition of such contracts. Congress adopted the Board's recommendations. Therefore, Sec. 812(3) was not intended to forbid such contracts. In a footnote to Swayne & Hoyt Ltd. v. United States, 300 U. S. 297, 307, the Court referred to the Alexander Report as recognizing that conference agreements providing for such contracts might, in some circumstances, be valid.[35]

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[35] That footnote reads: "The report of the House Committee on Merchant Marine & Fisheries, H. R. Doc. 805, 63d Cong., 2d Sess. (1914), recommended the prohibition of deferred rebates, adopted in Sec. 14 of the Shipping Act, because it operated to tie shippers to a group of lines for successive periods, and because the system 'is unnecessary to secure excellence and regularity of service, a considerable number of conferences being operated today without this feature.' See, e.g. pp. 103-105, 200. The Committee recognized that the exclusive contract system does not necessarily tie up the shipper as completely as 'deferred rebates,' since it does not place him in 'continual dependence' on the carrier by forcing his exclusive patronage for one contract period under threats of forfeit of differentials accumulated during a previous contract period. Ac-

(f) The dual-rate system is not the equivalent of giving the conferences power to issue certificates of convenience and necessity. There is, said the Board in its opinion here, ". . . no evidence that the dual-rate system . . . will . . . effectively cause the exclusion of an independent carrier from any trade route on which he wishes to operate."

4. The following are suggested answers to the Board's contentions summarized in point 3:

[fols. 208-209] (a) The words "detriment of the commerce of the United States" in Sec. 814 are far too vague to empower the Board to establish reasonable maximum rates for foreign commerce conferences, since those words are in significant contrast with the very specific provision, as to maximum rates of interstate carriers in Sec. 817, which was enacted at the same time as Sec. 814.

The statements, in the cited cases, by the Board's predecessors, that Sec. 814 confers powers to fix foreign commerce conference maximum rates, were but dicta, since in those cases the Board did not exercise that power. Nor, in the thirty-four years (1916-1950) since the statute was enacted, has the Board ever attempted to fix such maximum rates.[36]

Counsel for the conference carriers said, in oral argument, that it would never be feasible for the Board to disapprove of foreign commerce conference agreements, when tendered to the Board for approval, on account of unreasonably high rates, because a Board investigation, conducted at that time, into the reasonableness of such rates would be fruitless, and would preclude approval, as conditions affecting rates in foreign commerce fluctuate

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cordingly the Committee did not condemn the contract system completely. Cf. W. T. Rawleigh Co. v. Stoomvaart, 1 U. S. S. B. 285. The policy of the statute may properly be applied where, as in the circumstances of this case, the contract system must be taken as actually operating to effect a monopoly. Cf. Eden Mining Co. v. Bluefields Fruit & S. S. Co., 1 U. S. S. B. 41."

[36] Counsel for the Board, in a letter to this court, said that "there are no decisions of the Board or its predecessors which imposed maximum rates on conference carriers engaged in foreign commerce."

rapidly. He intimated that the Board could subsequently modify or abrogate such a conference agreement, previously approved, because of unreasonably high rates. But he did not explain why, since conditions would then also be fluctuating, it would then be more feasible for the Board to investigate and fix reasonable maximum rates.

A recent Report by a Senate Sub-Committee [37] states: "Rates in the foreign trade cannot be subject to the direct [fols. 210-211] control of the Government. They are set through the medium of conference agreements between the American and foreign operators in each particular service;" and adds that "discipline in the matter of rates" in foreign commerce "was nearly impossible by our government" and that only "conference discipline"—i.e., concurrence by members of the conferences—can keep rates reasonable. There is, then, no efficacious governmental power to compel reasonable rates in the case of foreign-trade conference carriers.

(b) Section 812(3) does apply to joint action, since Sec. 812 begins with a clause relating to what a carrier does "directly or indirectly." In Pacific Forest Industries v. Blue Star Line, Ltd., 2 U. S. M. C. 54, 57, the Maritime Commission said: "There is testimony to the effect that the conference threatened to deny complainant space unless it agreed to the increased rates. This is denied by conference witnesses. Such retaliation would be a misdemeanor under the act for which a severe penalty is provided." Thus the Board's predecessor recognized that Sec. 812(3) applies to a conference.

(c) The authorization in Sec. 814 of provisions for "special rates" does not sanction such rates if used to penalize a shipper for patronizing another carrier, for that practice is explicitly made unlawful in Sec. 812(3).

(d) "Retaliate" in Sec. 812(3) does not relate exclusively to conduct penalizing past acts of a shipper: The lex talionis served as a warning of the consequence of future misdeeds. "Retaliatory statutes" look to the fu-

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[37] Senate Report 2494, 81st Cong., 2d Sess. pp. 84-85.

[38] See 14A C. J. 1268-1270; 20 C. J. S. 44-45.

ture.[38] So, too, does Sec. 812(3) in the phrase "threatening to refuse." There is no basis for the assertion that Sec. 812(3) was intended merely to "codify." Menacho v. Ward, 27 F. 529.[39]

[fols. 212-213] Answering the Board's argument that there is here no retaliation since the non contract rate is charged a shipper who does not sign a contract, regardless of whether or not he patronized an independent carrier, it is noted that the higher rate is charged a shipper who does sign a contract and who then patronizes an independent: in such a situation the higher rate is exacted for the shipper's conduct which is past conduct at the time of such exaction.

(c) The Alexander Report did not approve exclusive patronage contracts. Referring to "deferred rebate systems" as "objectionable," it said (p. 307): "By deferring the payment of the rebate until three or six months following the period to which the rebate applies, ship-owners effectively tie the merchants to a group of lines for successive periods. In this connection *it is argued*[40] that the ordinary contract system does not place the shipper in the position of continual dependence that results from the deferred rebate system." More important, Congress significantly deviated from the Report's recommendation. The Report (p. 421) recommended that "all carriers should be prohibited from retaliating against any shipper by refusing space accommodations when such are available, or by resorting to other unfair methods of discrimination, because such shipper has patronized an independent line, or has filed a complaint charging unfair treatment, or for any [fol. 214] other reason." This recommendation was before the Committees which, in the next session, brought out (July 18, 1916) the Bill which became the 1916 Act. See 64th Cong. 1st Sess., Sen. Report No. 689, pp. 10-11. But the Bill and the Act importantly departed from the recommendation of the Alexander Report: Sec. 812(3) substituted, for the recommended words "other unfair methods

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[39] See footnote 22 as to the inconsistent position of the Board and its predecessors concerning the significance of Menacho v. Ward.

[40] Emphasis added.

of discrimination," the words "other discriminating or unfair methods." And this change was concomitant with another deviation from the Alexander Report by which Congress inserted "unfair or unjustly discriminatory" in Sec. 812(4)—thus showing that it knowingly and deliberately deleted "unfair" in Sec. 812(3).

The footnote in Swayne & Hoyt, Ltd. v. United States, 300 U. S. 297, is at best, dictum, for the Court there affirmed an administrative decision which had disapproved an exclusive patronage provision as unduly discriminatory under Secs. 815 and 816, so that Sec. 812(3) was not before the Court. Moreover, the body of the court's opinion, which said that the operation of an exclusive contract system "does not differ substantially from that of deferred rebates," is somewhat inconsistent with the footnote. In addition, although the Court in the footnote referred to the Alexander Report, it did not have its attention directed to the fact that Congress had importantly deviated from the Report's recommendations.

(f) It does not answer the certificate-of-convenience argument to say that the dual rate provisions will not exclude an independent carrier from any trade route on which he wishes to operate. For as the Board states in its brief (see footnote 13 supra), such exclusion will result if the [fol. 215] dual-rate provisions work successfully.

(g) The Attorney General advanced the following contention: The exemption in Sec. 814 from the anti-trust laws is specifically restricted to an "agreement" by a carrier "with another such carrier or other person subject to this chapter"; a shipper, under Sec. 801, is not an "other person subject to" this Chapter; consequently the exemption does not include a contract between a conference and a shipper. In support of this argument, it is noted that the Alexander Report recommended that Commission approval be required not only of agreements between carriers but also of carriers' contracts with shippers, but that, in enacting Sec. 814, the recommendation as to contracts with shippers was omitted.

5. It is suggested that an exclusive-patronage provision in a conference agreement will not violate Sec. 812(3) if that provision has a clearly legitimate economic purpose

and effect other than that of either penalizing shippers for patronizing non-conference carriers or creating a cartel free of competition from such independent carriers. This suggestion has these variants: (a) Such a provision is lawful if, and only if, the Board, on the basis of substantial evidence, finds that the "spread" between the contract and noncontract rates is reasonable. (b) Such a provision is lawful if, and only if, in addition to (a), the Board, on the basis of substantial evidence, finds that the noncontract rates are not unreasonably high.[41]

I repeat that I express no opinion as to the cogency of any of the foregoing arguments.

The examiner in this case stated that there was no evidence as to the reasonableness of the two types of rates. Nor did the Board find the contract rates reasonable. As stated in footnote 16, plaintiff urges that the contract rates are unreasonably high, since they are the rates established during World War II to cover the then prevailing and unusually high costs.

[File endorsement omitted.]

[fols. 216-217] 19223, Civ. 47-749.

[fol. 218] In United States District Court

[Title omitted]

Final Order and Judgment—April 5, 1951

This cause, having come on to be heard,
It is ordered

1. That defendants, North Atlantic Continental Freight Conference, Continental North Atlantic Westbound Freight Conference, and the defendant carriers, members of said two Conferences, their officers, agents, servants, employees and attorneys are hereby perpetually enjoined from taking any steps to execute or effectuate, directly or indirectly,

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[41] Cf. the discussion in footnote 16 of Lough v. Outerbridge, 143 N. Y. 271.

any contracts with shippers containing the contract/non-contract dual-rate system, pursuant to the contract/non-contract provisions of conference agreements numbered 4490-6 and 7920-1 and heretofore proposed to be effectuated by said Defendants in the North Atlantic Trades, on November 1, 1948.

2. That the Order of the Federal Maritime Board dated December 1, 1950 is set aside.

3. That the motions to dismiss the amended complaint are denied.

4. That the motion of defendant carriers to strike the answer to the amended complaint filed by defendant, United States of America, is denied.

[fol. 219] 5. That plaintiff recover its taxable costs from the defendant Conferences and Carriers, jointly or severally, including the costs of the premiums paid on all bonds heretofore filed by plaintiff as a condition of the granting of the temporary restraining order and the preliminary injunction, both heretofore issued by this Court. Said bonds are hereby vacated and discharged.

Dated: March 20, 1951.

Entered: March 21st, 1951.

Jerome N. Frank, United States Circuit Judge, Sylvester J. Ryan, United States District Judge, Samuel H. Kaufman, United States District Judge.

Bill of costs taxed in the sum of $1895.60 April 5, 1951 (Plaintiff).

Judgment entered: William V. Connell, Clerk.

[fol. 220] In United States District Court

[Title omitted]

Order Denying Motions for Reconsideration

Defendants North Atlantic Continental Freight Conference, Continental North Atlantic Westbound Freight Conference, et al. and defendant Federal Maritime Board hav-

ing moved for reconsideration of this Court's decision in the above-entitled action,

It is ordered

That the motions for reconsideration be and they are hereby denied.

Dated: March 20, 1951.

Entered: March 26, 1951.

Jerome N. Frank, United States Circuit Judge, Sylvester J. Ryan, United States District Judge, Samuel H. Kaufman, United States District Judge.

[fol. 221] In United States District Court

Petition for Appeal to the Supreme Court of the United States—May 16, 1951

To the Honorable Jerome N. Frank, Circuit Judge, United States Court of Appeals, or The Honorable Sylvester J. Ryan, United States District Judge, or The Honorable Samuel H. Kaufman, United States District Judge, they being members of a Three-Judge Court constituted by Order dated October 28, 1948.

A/S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corp., Compagnie Generale Transatlantique, Compagnie Maritime Belge, Cunard White Star, Ltd., Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svendborg, N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij, United States Lines Company, Waterman Steamship Corporation, Ellerman's Wilson Line, Ltd. and South Atlantic Steamship Line, Inc., being defendants as members of one or both of the two Conferences named in the above-entitled action, considering themselves aggrieved by the final order and judgment of this Court entered herein on March 21, 1951 (judgment entered and docketed April 5, 1951), which among other things, granted a permanent injunction against them and set aside the order of the [fols. 222-223] Federal Maritime Board dated December 1, 1950, do hereby pray that an appeal be allowed to the Su-

preme Court of the United States from said final order and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said defendants; and that the material parts of the records, proceedings and papers upon which said final order and judgment were based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the Rules in such case made and provided.

Respectfully submitted, Roscoe H. Hupper, Burton H. White, Attorneys for Petitioners.

Dated: New York, N. Y., May 16, 1951.

[fol. 224] In United States District Court

Order Allowing Appeal—May 17, 1951

A/S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corp., Compagnie Generale Transatlantique, Compagnie Maritime Belge, Cunard White Star, Ltd., Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svendborg, N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij, United States Lines Company, Waterman Steamship Corporation, Ellerman's Wilson Line, Ltd., and South Atlantic Steamship Line Inc., defendants, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final order and judgment of this Court in this case entered on March 21, 1951 (judgment entered and docketed April 5, 1951), which, among other things, granted a permanent injunction against them and set aside the order of the Federal Maritime Board dated December 1, 1950, and from each and every part of said order and judgment, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby

[fols. 225-226] Ordered that the said appeal be and the same is hereby allowed as prayed for; and it is further

Ordered that the amount of the appeal bond is hereby fixed in the amount of $500 with good and sufficient surety and shall be conditioned as may be required by law; and it is further

Ordered that the Clerk of this Court shall prepare and certify a transcript of the record, proceedings and final order and judgment in this cause and transmit the same to the Clerk of the Supreme Court of the United States so that he shall have the same in said Court within 60 days of this date; and it is further

Ordered that citation shall issue in accordance with law.

Samuel H. Kaufman, U. S. D. J.

Dated: New York, N. Y., May 17, 1951.

[fols. 227-229] Citation in usual form omitted in printing.

[fol. 230] In United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal—May 16, 1951

A/S J. Ludwig Mowinckels Rederi and the other carrier defendants named in the above caption in the above-entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the final order and judgment of the statutory court, entered on March 21, 1951 (judgment entered and docketed April 5, 1951).

The statutory court erred:

1. In enjoining defendant carriers from contracting with shippers under the contract/non-contract dual rate system pursuant to and as permitted under Conference Agreements No. 4490-6 and No. 7920-1 as approved by the Maritime Commission under Sec. 15 of the Shipping Act 1916 (39 Stat. L. 733; 46 U. S. C. Sec. 814).

islation, analogous to the functions and powers of Interstate Commerce Commission.

10. In drawing independently from a trial examiner's findings of fact an inference different from that drawn and adopted by the Federal Maritime Board in the making of its findings, report and order, and substituting said independent inference for that of the Board as to effect of the word "arbitrary", and imputing unjust discrimination to the same, notwithstanding that the language of the examiner was not inconsistent with but was susceptible of and supported the inferences and conclusions made by the Board; in event of conflict the findings of the Board would control.

11. In prohibiting to defendants exercise of their rights of operating under their Conference Agreements to the fullest extent permitted by the Maritime Commission's orders approving said Agreements, which orders are still in force.

Wherefore, said defendants pray that the order and judgment of the statutory court be reversed, and for such [fols. 232-233] other and further relief as the Court may deem fit and proper.

Dated: New York, N. Y., May 16, 1951.

Roscoe H. Hupper, Burton H. White, Counsel for said Defendants-Appellants.

[fols. 234-236] Statement Required by Paragraph 2, Rule 12, of the Rules of the Supreme Court of the United States (omitted in printing).

[fols. 237-239] Proof of Service (omitted in printing).

[fols. 240-242] Praecipe (omitted in printing).

[fol. 243] In United States District Court

[Title omitted]

Petition for Appeal—May 16, 1951

Federal Maritime Board, successor to United States Maritime Commission, being an intervening defendant in this action and considering itself aggrieved by the final order of this court entered March 21, 1951, petitions that an appeal be allowed to the Supreme Court of the United States from said final order and from each and every part thereof; that a citation be issued according to law; that an order be made pursuant to 28 U. S. C. 2408 (Federal Maritime Board being an agency of the United States) dispensing with an appeal bond for costs; and that the material parts of the record, proceedings and papers upon which said final judgment and decree was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, s/ Francis S. Walker, General Counsel, s/ George F. Galland, Attorneys for Federal Maritime Board.

Washington, D. C.

[fol. 244] In United States District Court

[Title omitted]

Order Allowing Appeal—May 17, 1951

Federal Maritime Board having made and filed its petition for an appeal to the Supreme Court of the United States from the final order of this court entered in this cause March 21, 1951, and from each and every part thereof, and having presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided, it is hereby

Ordered that said appeal be and the same hereby is allowed; and it is further

Ordered, pursuant to 28 U. S. C. 2408, an appeal bond for costs is not required of Federal Maritime Board, said Board being an agency of the United States; and it is further

Ordered that a citation shall issue in accordance with law.

s/ Samuel H. Kaufman, U. S. D. J.

Dated:

[fol. 245] Citation in usual form omitted in printing.

[fol. 246] In United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal—May 16, 1951

Federal Maritime Board, intervening defendant in the above-entitled action, in connection with its appeal to the Supreme Court of the United States, files the following assignment of errors upon which it will rely in prosecuting its appeal from the final judgment of the District Court entered March 21, 1951.

The District Court erred:

1. In attributing to the Federal Maritime Board a finding that the proposed contract and non-contract rates of the defendant carriers "were such that the spread between those rates was arbitrary."

2. In holding that the Federal Maritime Board, by its order of December 1, 1950 or by any other order, approved dual rate provisions in the conference agreements of defendant carriers, "which permit unreasonable spreads between the contract and non-contract rates" of such carriers.

3. In holding that the dual rate provisions in the conference agreements of defendant carriers, which provisions the Federal Maritime Board approved by its order of [fol. 247] December 1, 1950, and its predecessor approved by previous orders of January 2, 1948 and August 24, 1948, are unlawfully discriminatory between shippers.

4. In holding invalid the "dual" or "contract-non-contract" provisions in the conference agreements of defendant

carriers notwithstanding that such provisions stand approved by orders of the United States Maritime Commission (the Board's predecessor) dated January 2, 1948 and August 24, 1948, which orders the District Court did not set aside.

5. In holding that the Federal Maritime Board exceeded its powers in authorizing ocean carriers, members of conferences subject to the Board's jurisdiction, to establish for non-exclusive (i. e., "non-contract") shippers freight rates which exceed those offered to "contract" shippers by a percentage of the contract rate.

6. In setting aside the Federal Maritime Board's order of December 1, 1950.

7. In enjoining defendant carriers from employing the "contract/non-contract dual rate system, pursuant to the contract/non-contract provisions of conference agreements numbered 4490-6 and 7920-1", notwithstanding that such provisions stand approved by presently effective orders of the United States Maritime Commission dated January 2, 1948 and August 24, 1948 which orders were left undisturbed by the District Court.

8. In entering a final order which is inconsistent with the Court's decision, in that the decision condemned only a particular schedule of specific contract and non-contract rates, whereas the final order enjoins the use not only of a specific rate schedule but of the contract rate system.

Wherefore, Federal Maritime Board prays that the final decree of the District Court be reversed, and for such other [fol. 248] relief as the Court may deem proper.

s/ Francis S. Walker, General Counsel, s/ George F. Galland, Attorneys for the Federal Maritime Board.

Washington 25, D. C.

[fols. 249-250] In United States District Court

Statement required by Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States (omitted in printing).

[fols. 251-252] Admission of Service (omitted in printing).

[fols. 253-254] Praecipe (omitted in printing).

[fol. 255] Stipulation authorizing certification of only one record (omitted in printing).

[fol. 256] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 257] Supreme Court of the United States

No. 134—October Term, 1951

[Title omitted]

Statement of Points to Be Relied Upon and Designation of Parts of Record to Be Printed—Filed July 3, 1951

a. Carrier appellants adopt for their statement of points upon which they intend to rely in their appeal to this Court all the points contained in their Assignment of Errors heretofore filed with emphasis on paragraphs 6, 7, 8, 9 and 10 thereof in respect of the lawful and controlling functions and determinations of the Federal Maritime Board being disregarded and overridden by the Statutory Court.

b. Carrier appellants designate the entire record herein for printing by the Clerk of this Court, except that the following exhibits introduced at the hearing before the United States Maritime Commission Trial Examiner (included in Record Document No. 7, Carrier Appellants' praecipe No. 5) may be omitted:

Exhibits 1 through 1-K, inclusive (duplicates of Exhibits attached to amended complaint).

Exhibit 5-A through 5-D, inclusive Dutch originals (Print English translations).

Exhibits 12 and 13 (Print Exhibits 12-A, 12-B, and 12-C).

Exhibit 14 (duplicate to exhibit attached to amended complaint).

[fol. 258] Exhibits 18 through 24, inclusive.

Exhibit 30, *except* cover page and pp. 14-15 under heading "Rate Conferences."

Roscoe H. Hupper, Burton H. White, Counsel for Carrier Appellants, 27 William Street, New York, 5, N. Y.

Dated: July 2, 1951.

[File endorsement omitted.]

[fols. 259-261] Certificate of Service (omitted in printing).

[fols. 262-263] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 135

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANT FEDERAL MARITIME BOARD AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed July 2, 1951

1. Appellant Federal Maritime Board adopts for its statement of points upon which it intends to rely in its appeal to this court, the points set forth in its assignments of error heretofore filed.

2. Said appellant adopts the designation heretofore filed by the carrier appellants for printing of the parts of the record to be printed by the clerk of this court.

Francis S. Walker, General Counsel, George F. Galland, Attorneys for the Federal Maritime Board.

[File endorsement omitted.]

Washington 25, D. C., June 28, 1951.

[fol. 264] SUPREME COURT OF THE UNITED STATES

No. 134

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed July 13, 1951

In accordance with the provisions of Rule 13, appellee, Isbrandtsen Company, Inc., herewith designates the following additional matter for inclusion in the record to be printed:

Exhibits 18, 19 and 20 of the record made at the hearing before the United States Maritime Commission Trial Examiner (designated as Item No. 5 in Carrier Appellants' praecipe).

John J. O'Connor, William L. McGovern, Counsel for Appellee.

Of Counsel: Arnold, Fortas & Porter, 1200 Eighteenth Street, N. W., Washington, D. C.

[File endorsement omitted.]

Date: July 12, 1951.

[fol. 265-266] Certificate of Service (omitted in printing).

[fol. 267] SUPREME COURT OF THE UNITED STATES

Nos. 134, 135

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed July 20, 1951

The Secretary of Agriculture of the United States, appellee in the above-entitled cause, hereby designates the following additional parts of the record herein for printing by the Clerk of this Court:

1. Stipulation and Addition to the Record, dated July 12, 1951, regarding the Intervention of the Secretary of Agriculture of the United States in this cause.

2. Certified copy of the Motion for Leave to Intervene of the Secretary of Agriculture of the United States, filed December 20, 1950, in the United States District Court for the Southern District of New York.

3. Certified copy of the Order Allowing Intervention of the District Court allowing the Secretary of Agriculture to intervene as a party plaintiff, filed January 22, 1951.

4. Certified copy of Petition of the Secretary of Agriculture of the United States for Leave to Intervene, filed April 4, 1949, with the United States Maritime Commission. [fol. 268] 5. Certified copy of Order of the Maritime Commission granting Petition of Secretary of Agriculture for Leave to Intervene, issued April 7, 1949.

Dated: July 20, 1951.

Neil Brooks, Associate Solicitor, U. S. Department of Agriculture, Washington, D. C.

[File endorsement omitted.]

[fols. 269-270] Certificate of Service (omitted in printing).

[fol. 271] IN THE SUPREME COURT OF THE UNITED STATES, October Term, 1951

Nos. 134, 135

STIPULATION AND ADDITION TO THE RECORD—July 12, 1951

It is hereby stipulated and agreed by and between the respective parties to the above-entitled cause, by their respective attorneys, that the Secretary of Agriculture of the United States intervened as a party plaintiff in this cause, and that, pursuant to Rule 10 of the Rules of this Court, the following addition be made to the transcript of the record on appeal filed with this Court:

1. Certified copy of the Motion for Leave to Intervene of the Secretary of Agriculture of the United States, filed

December 20, 1950, in the United States District Court for the Southern District of New York.

2. Certified copy of the Order Allowing Intervention of the District Court allowing the Secretary of Agriculture to intervene as a party plaintiff, filed January 22, 1951.

3. Certified copy of Petition of the Secretary of Agriculture of the United States for Leave to Intervene, filed April 4, 1949, with the United States Maritime Commission.

[fol. 272] 4. Certified copy of Order of the Maritime Commission granting Petition of Secretary of Agriculture for Leave to Intervene, issued April 7, 1949.

5. This Stipulation.

Dated: Washington, D. C., July 12, 1951.

William L. McGovern, Attorney for Plaintiff, Burton H. White, Attorneys for North Atlantic Continental Freight Conference, et al., Philip B. Perlman, Solicitor General, United States Department of Justice, George H. Galland, Attorney, Federal Maritime Board, Neil Brooks, Associate Solicitor, United States Department of Agriculture.

[fol. 273] Clerk's Certificate to foregoing paper omitted in printing.

[fols. 274-275] In the United States District Court

[Title omitted]

Motion for Leave to Inervene by the Secretary of Agriculture of the United States—Filed December 20, 1950

To the Honorable Judges of the Aforesaid Court:

The Secretary of Agriculture of the United States moves for leave to intervene as a party plaintiff in the above-entitled action, in accordance with the provisions of section 203 (j) of the Agricultural Marketing Act of 1946 (7 U. S. C. 1946 ed. 1622 (j)), section 31 of the Shipping Act, 1916 (46 U. S. C. 1946 ed. 830), and section 2323 of

the Judicial Code (1948 Revision) (28 U. S. C. A. 1948 ed. 2323).

Charles W. Bucy, Associate Solicitor, Henry A. Cockrum, Attorney, United States Department of Agriculture, Washington 25, D. C.

[File endorsement omitted.]

[fol. 276] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 277] In the United States District Court

[Title omitted]

Order Allowing Intervention—Filed Jan. 22, 1951

Upon motion of the Secretary of Agriculture of the United States for leave to intervene as a party plaintiff in the above-entitled action, and it appearing to the Court from the said motion that applicant is entitled to intervene as of right,

It is ordered, That the Secretary of Agriculture of the United States is hereby granted leave to intervene and is hereby made a party plaintiff in the above-entitled action with the right to file pleadings and be otherwise repre-[fols. 278-279] sented herein by counsel in the manner and with like effect as if named as an original party to this action.

Done this 22nd day of January 1951.

Julian N. Frank, U. S. C. J., Sylvester J. Ryan, U. S. D. J., Samuel H. Kaufman, U. S. D. J.

[File endorsement omitted.]

[fol. 280] Secretary's certificate (omitted in printing).

[fol. 281] BEFORE THE UNITED STATES MARITIME COMMISSION

[Title omitted]

PETITION OF THE SECRETARY OF AGRICULTURE OF THE UNITED STATES FOR LEAVE TO INTERVENE—April 1, 1949

[fol. 282] Comes now the Secretary of Agriculture of the United States and represents that he has an interest in the matter in controversy in the above-captioned proceeding; that he desires to intervene in, and be made a party to, the proceeding; and, for grounds for intervention, states as follows:

I

Section 203 (j) of the Agricultural Marketing Act of 1946 (7 U. S. C. 1622) directs and authorizes the Secretary

> "To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to . . . the Maritime Commission, . . . with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups of carriers."

[fol. 283] Section 207 of such Act (7 U. S. C. 1626) defines "agricultural products" to include

> "agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shell fish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on the farms and any processed or manufactured product thereof."

Section 202 of such Act (7 U. S. C. 1621) read in part as follows:

> "In order to attain these objectives, it is the intent of Congress to provide for . . . (3) an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products through research, market aids and services, and regulatory activities, to the end that marketing methods and facilities may be

improved, that distribution costs may be reduced and the price spread between the producer and consumer may be narrowed, that dietary and nutritional standards may be improved, that new and wider markets for American agricultural products may be developed, both in the United States and in other countries, with a view to making it possible for the full production of American farms to be disposed of usefully, economically, profitably, and in an orderly manner.

II

The present proceeding involves, *inter alia*, the exclusive patronage contract system of rate making as used by steamship conferences operating in foreign commerce. It is the understanding of this Department that rates thus made are applicable on general commodities, including agricultural products and farm supplies. To the extent, therefore, that the system of rate making here involved may affect the free movement in foreign commerce of agricultural products and farm supplies at rates which are just, reasonable, and otherwise lawful the interest of this Department is self-evident.

[fol. 284] III

It is not the intention of the Department to broaden unduly the scope of the present proceeding in any respect whatever.

IV

Wherefore, the Secretary of Agriculture requests that he be permitted to intervene in the present proceeding and that he thereafter be treated as a party thereto, all according to the Rules of Procedure of the Commission.

Respectfully submitted, by direction of the Secretary of Agriculture of the United States.

Chas. B. Bowling, Chief, Chas. D. Turner, Transportation Specialist, Transportation Rates and Services Division, Marketing Facilities Branch, Charles W. Bucy, Associate Solicitor, Henry A. Cockrum, Attorney, United States Department of Agriculture, Washington 2, D. C.

[File endorsement omitted.]

Dated April 1, 1949.

[fols. 285-286] BEFORE THE UNITED STATES MARITIME COMMISSION

[Title omitted]

ORDER ALLOWING INTERVENTION

Upon consideration of the positions of Pacific Coast Borax Company and the United States Department of Agriculture for leave to intervene in this proceeding.

It is ordered, That the petitions be, and they are hereby, granted.

By the Commission.

/s/ A. J. Williams, Secretary.

CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

(Pages 167 to 331)

Supreme Court of the United States

OCTOBER TERM, 1961

No. 134

A/S J. LUDWIG MOWINCKELS REDERI, ET AL., APPELLANTS,

vs.

ISBRANDTSEN CO., INC., ET AL.

No. 135

FEDERAL MARITIME BOARD, APPELLANT,

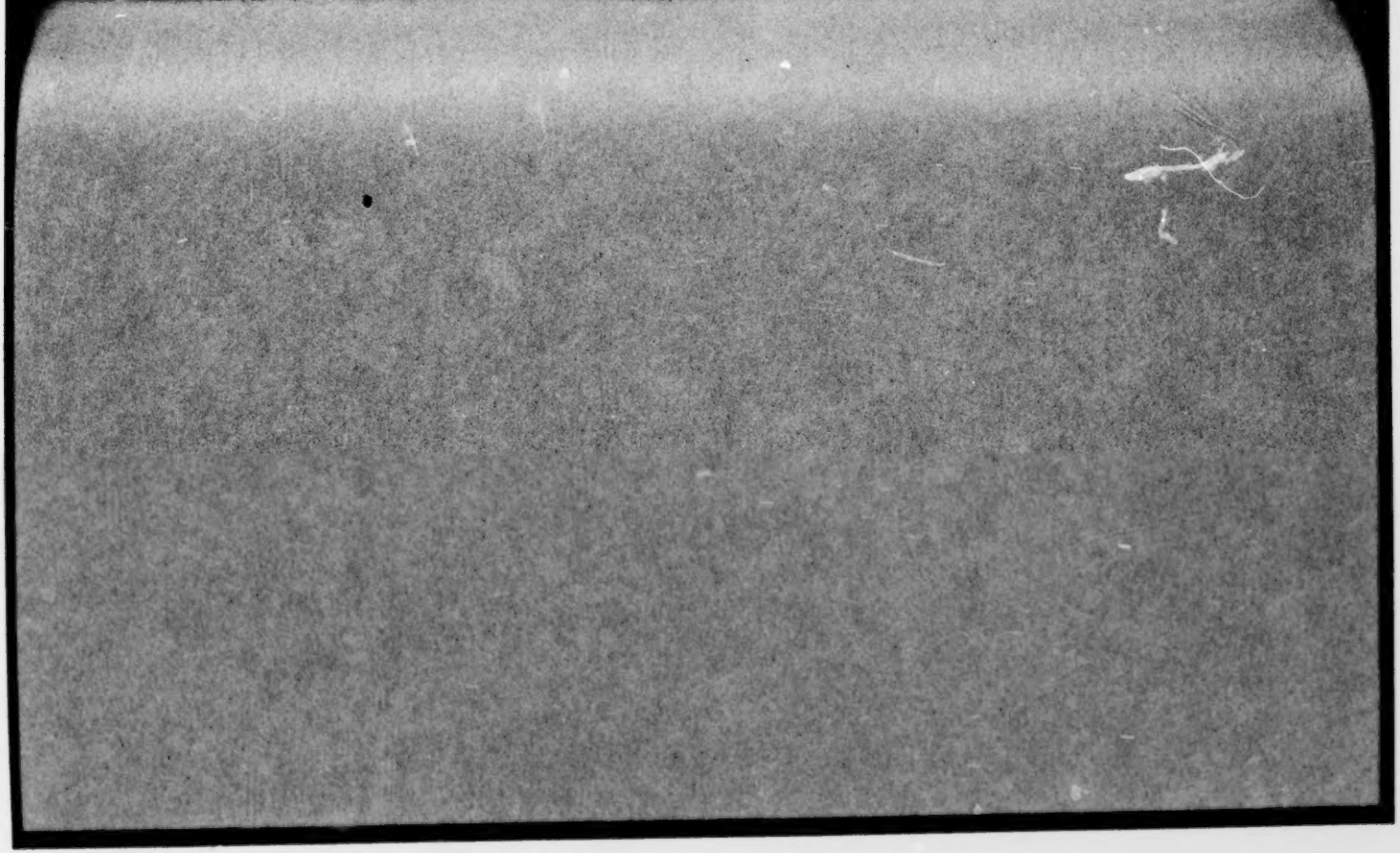
vs.

THE UNITED STATES OF AMERICA, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED JUNE 21, 1962.

PROBABLE JURISDICTION NOTED OCTOBER 8, 1962.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 134

A/S.J. LUDWIG MOWINCKELS REDERI, ET AL., APPELLANTS,

vs.

ISBRANDTSEN CO., INC., ET AL.

No. 135

FEDERAL MARITIME BOARD, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

VOL. II

INDEX

	Original	Print
Order noting probable jurisdiction	287	167
Record of proceedings before United States Maritime Commission	289	167
Complaint	289	167
Exhibit "A"—Order of the United States Maritime Commission of January 2, 1948 approving agreements (copy) (omitted in printing)	295	
Agreement No. 4490-6 (copy) (omitted in printing)	296	
Exhibit "B"—Agreement No. 7920-1 (copy) (omitted in printing)	302	
Exhibit "C"—Order of U.S.D.C., Southern New York, granting preliminary injunction in Isbrandtsen Co. Inc. vs. United States of America et al. Civil Action No. 47-749	304	172

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 26, 1951.

—8561

	Original	Print
Record of proceedings before United States Maritime Commission—Continued		
Answer of respondent carriers to complaint	310	177
Motion for expedited procedure	315	180
Answer to complainants' motion	318	182
Order denying motion	321	183
Transcript of proceedings at prehearing conference	323	184
Letter from Commission to Roscoe H. Hupper enclosing copy of recommended decision	352	202
Recommended decision of examiner	353	202
Order remanding record to examiner	374	225
Motion of Isbrandtsen Company, Inc. to amend Commission's order of remand	375	225
Order modifying order of remand	380	229
Recommended supplemental decision of examiner	381	230
Report and order of the Board (copies) (omitted in printing)	413	
Transcript of hearing	433	262
Appearances	433	262
Colloquy	435	263
Statements of counsel	442	267
Offers in evidence	452	274
Statement by Mr. Hupper	470	285
Testimony of Hans Isbrandtsen (resumed)	944	564
Charles R. Andrews	990	592
Colloquy	586	350
Testimony of Matthew S. Crinkley	587	351
Testimony of Hans Isbrandtsen (resumed)	944	564
Charles R. Andrews	990	592
Charles D. Turner	1058	632
Charles R. Andrews (resumed)	1107	661
James Sinclair	1145	685
Charles R. Andrews (recalled)	1211	722
Morris S. Rosenthal	1278	764
Arnold K. Henry	1341	802
Charles R. Andrews (recalled)	1436	859
Robert C. Lee	1586	949
James Sinclair (resumed)	1649	984
Hymen I. Malatzky	1705	1019
Hans Isbrandtsen (recalled)	1732	1035
Robert C. Lee (resumed)	1782	1066
P. E. McIntyre	1787	1069
C. W. Kenick	1790	1071
Matthew S. Crinkley (recalled)	1794	1074
Hans Isbrandtsen (recalled)	1831	1097
Hymen I. Malatzky (recalled)	1841	1103

Record of proceedings before United States Maritime Commission—Continued

EXHIBITS

	Original	Print
2—Memorandum of agreement on the Westbound North Atlantic trade by the Continental North Atlantic Westbound Freight Conference	1848	1106
3—Agreement No. 4490—Schedule of Rates and Tariff Rules No. 18	1851	1110
4—Tariff No. 2 for Westbound Cargo	1855	1115
5A-5D—Translations of circular letters dated January 17, March 14, May 8, July 18, 1939 from Vinke & Co. addressed to shippers or consignees	1859	1117
6—Letter dated October 25, 1948 from Hail & Cotton, Inc. to Isbrandtsen Company, Inc.	1869	1122
7—Letter dated October 27, 1948 from Boler Petroleum Company to Isbrantsen Company, Inc.	1870	1123
8—Letter dated October 28, 1948 from Louis Marx & Co. to Isbrandtsen Company, Inc.	1871	1124
9—Copy of agreement between Messrs. Stofzuiger Centrale P. Ilzerman and Isbrandtsen-Moller Co., Inc., November 17, 1936	1872	1125
10—Letter dated August 30, 1948 from United States Maritime Commission to North Atlantic Continental Freight Conference Chairman	1873	1126
11—Letter dated December 19, 1935 from Isbrandtsen-Moller Company, Inc. to Anaconda Wire & Cable Company	1875	1128
12A—List of 581 Commodities on Which the Rates of Isbrandtsen Co. Inc., are lower than the rates of North Atlantic Continental Freight Conference Lines	1876	1130
12B—Comparison of Conference and Isbrandtsen-Moller Co., Inc. rates from November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam	1903	1159
12C—List of Isbrandtsen-Moller Co., Inc. Contract rates for period January 2, 1937 to August 31, 1939 to Antwerp-Rotterdam-Amsterdam	1916	1178
15—Statement showing domestic exports of selected agricultural products to the Netherlands, etc.	1921	1185
16—Statement showing domestic exports of selected agricultural products, also commodity weights with freight charges, etc.	1922	1188
17—Statement showing domestic exports of principal agricultural products to all foreign countries, etc.	1923	1189
18—Letter dated October 1, 1948 from Trans-Atlantic Associated Freight Conferences to Joseph Turner & Co.	1924	1194

Record of proceedings before United States Maritime Commission—Continued

	Original	Print
Exhibits—Continued		
19—Letter dated October 6, 1948 from Joseph Turner & Co. to Trans-Atlantic Associated Freight Conference	1925	1194
20—Letter dated October 14, 1948 from Trans-Atlantic Associated Freight Conference to Joseph Turner & Co.	1926	1194
25—Form letter of Isbrandtsen-Moller Company, Inc. in which the offer to make a contract rate was put forward to shippers	1927	1194
28—Copy of cable dated May 25, 1949 from Vinke to Isbrandtsen	1928	1195
29—Copy of letter dated May 19, 1945 from Vinke & Co. to Isbrandtsen Company, Inc.	1929	1195
30—Cover page and extract from report of Committee on International Transport, May 1949, headed "Rate Conferences."	1930	1196

[fols. 287-288] SUPREME COURT OF THE UNITED STATES

Nos. 134 & 135, October Term, 1951

[Title omitted]

ORDER—October 8, 1951

The statements as to jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 289] BEFORE THE UNITED STATES MARITIME COMMISSION

Docket No. 684

IN THE MATTER OF NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE AGREEMENT NO. 4490-6 AND FRENCH NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE/NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE AGREEMENT NO. 7920-1

COMPLAINT

I. The complainant, Isbrandtsen Company, Inc., is a corporation, organized and existing under the laws of the State of New York, and is a common carrier, by water, engaged in transportation between ports in the United States, on the North Atlantic Coast, and elsewhere, and ports in Holland, Belgium and Germany, and elsewhere. Complainant's principal place of business is 26 Broadway, New York 4, New York.

II. Respondents are:

1. North Atlantic Continental Freight Conference which is a voluntary association and organization of common carrier steamship lines purporting to act pursuant to Conference Agreement No. 4490, as amended by Conference Agreement No. 4490-6 approved by Order of the Commission, dated January 2, 1948. Copies of said Order and said Conference Agreement 4490-6 are attached hereto, marked "Exhibit A" and made a part hereof. Said re-

spondent has its office and principal place of business at 80 Broad Street, New York 4, New York. The following respondents are members of the North Atlantic Continental Freight Conference: A/S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corp., Compagnie Generale Transatlantique, Compagnie Maritime Belge, Cunard White Star, Ltd., Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svendborg, Ellerman's Wilson Line, Ltd., N. V. Nederlandsch-Amerikaansche Stoomvaart-[fol. 290] Maatschappij, United States Lines Company, and Waterman Steamship Corporation.

2. Continental North Atlantic Westbound Freight Conference which is a voluntary association and organization of common carrier steamship lines purporting to act pursuant to Conference Agreement No. 7920-1, approved by the Commission on August 24, 1948. A copy of Conference Agreement No. 7920-1 is attached hereto, marked "Exhibit B" and made a part hereof. Said respondent has its office and principal place of business in the United States at 80 Broad Street, New York 4, New York. All of the members of the North Atlantic Continental Freight Conference, except Cunard White Star, Ltd., Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svendborg, and Ellerman's Wilson Line, Ltd., are members of the Continental North Atlantic Westbound Freight Conference, which also includes South Atlantic Steamship Line, Inc.

3. A/S J. Ludwig Mowinckels Rederi which is a corporation organized and existing under the laws of Norway and maintains an office for the transaction of business at 42 Broadway, New York 4, New York.

4. Black Diamond Steamship Corporation which is a corporation organized and existing under the laws of Maryland and maintains an office for the transaction of business at 39 Broadway, New York 6, New York.

5. Compagnie Generale Transatlantique which is a corporation organized and existing under the laws of France and maintains an office for the transaction of business at 17 State Street, New York 4, New York.

6. Compagnie Maritime Belge which is a corporation organized under the laws of Belgium and maintains an

office for the transaction of business at 10 Pearl Street, New York, New York.

7. Cunard White Star, Ltd., which is a corporation organized and existing under the laws of Great Britain and maintains an office for the transaction of business at 25 Broadway, New York 4, New York.

8. Ellerman's Wilson Line, Ltd., which is a corporation organized and existing under the laws of Great Britain [fol. 291] and maintains an office for the transaction of business at 24 State Street, New York 4, New York.

9. Dampskibsselskabet af 1912 A/S which is a corporation organized and existing under the laws of Denmark and maintains an office for the transaction of business at 30 Broad Street, New York 4, New York.

10. A/S Dampskibsselskabet Svendborg which is a corporation organized and existing under the laws of Denmark and maintains an office for the transaction of business at 30 Broad Street, New York 4, New York.

11. Nederlandsche Stoomvaart Maatschappij which is a corporation organized and existing under the laws of the Netherlands and maintains an office for the transaction of business at 29 Broadway, New York 6, New York.

12. United States Lines Company which is a corporation organized and existing under the laws of New Jersey and maintains an office for the transaction of business at 1 Broadway, New York 4, New York.

13. Waterman Steamship Corporation which is a corporation organized and existing under the laws of Alabama and maintains an office for the transaction of business at 19 Rector Street, New York, New York.

14. South Atlantic Steamship Line, Inc., which is a corporation organized and existing under the laws of Delaware and maintains an office for the transaction of business at 17 Battery Place, New York, New York.

III. Each of the above-named corporate respondents is engaged as a common carrier by water in the transportation of property in foreign trade between the North Atlantic ports of the United States and the ports of Holland, Belgium, and Germany and together with respondent conferences are subject to the Shipping Act of 1916 as amended (46 U. S. C. 801 et seq).

IV. On October 28, 1948 complainant herein, as plaintiff, filed its verified complaint in the United States District Court for the Southern District of New York against the above-named respondents, the United States, and Lykes Bros. Steamship Co., Inc., as defendants, alleging that so much of Conference Agreements numbered 4490-6 and [fol. 292] 7920-1 as purported to authorize the defendants to employ the exclusive patronage contract/non-contract rate system were null and void as contravening Sections 14 and 15 of the Shipping Act of 1916 (46 U. S. C. 812, 814).

V. The United States Maritime Commission intervened and became a party defendant in said action in the United States District Court.

VI. Lykes Bros. Steamship Co., Inc., having resigned from said Continental North Atlantic Westbound Freight Conference, was dismissed as a defendant in said action.

VII. On January 13, 1949 said United States District Court for the Southern District of New York entered its order dated January 7, 1949, in said action, a copy of which order is annexed hereto, marked "Exhibit C" and made a part hereof.

VIII. In accordance with the provisions of said order, complainant herein challenges the validity of so much of the said Conference Agreements Nos. 4490-6 and 7920-1 as purport to authorize respondent steamship lines, named as members of said North Atlantic Continental Freight Conference and Continental North Atlantic Westbound Freight Conference, to use the contract/non-contract, or the exclusive patronage contract, rate system, on the grounds that:

a) Such purported authorizations exceed the authority of the Commission under Section 15 of the Shipping Act of 1916, as amended (46 U. S. C. 814) and are absolutely null and void;

b) Such purported authorizations contravene the specific provisions contained in Section 14 of the Shipping Act of 1916 (46 U. S. C. 812) prohibiting retaliations or discriminations against a shipper for patronizing any other carrier; and

c) Under Article 1, Sec. 1, and Article 1, Sec. 8, paragraph 18 of the Constitution of the United States, no legislative authority is, or can be, delegated to the United

States Maritime Commission to authorize said Conferences, [fol. 293] by the use of said contract/non-contract rate system, to exclude this complainant, or any other person, from engaging in trade or commerce, and because such authorization would deprive the complainant herein of its property without due process of law, contrary to the Fifth Amendment of the Constitution of the United States.

Wherefore complainant prays

A) That an order be made by the United States Maritime Commission that so much of said Conference Agreements numbered 4490-6 and 7920-1 as purport to authorize a contract/non-contract, or exclusive patronage contract, rate system violate Sections 14 and 15 of the Shipping Act of 1916 and are revoked and annulled, and of no force and effect; and

B) Commanding the said two Conferences and all their member steamship companies, named in paragraph II herein, to cease and desist from taking any steps to execute or effectuate any exclusive patronage contracts with shippers, heretofore or hereafter entered into, or to put into effect the contract/non-contract rate system or to compel, induce or persuade shippers to execute or effectuate such contracts, or enter into such contracts with shippers, whereby the shipper, directly or indirectly agrees to effect all his transportation requirements exclusively by means of the member lines of the two defendant Conferences, or either of them, under penalty of being assessed freight rates higher than the rates currently prevailing, if he patronizes complainant herein or any other carrier, not a member of said respective Conferences, or any other penalty.

C) That such other and further orders be made as the Commission determines to be proper in the premises.

Dated at New York, N. Y., January 25th, 1949.

Isbrandtsen Company, Inc., by (Sgd.) Matthew S. Crinkley, Vice President, 26 Broadway, New York 4, New York, John J. O'Connor, 423 Washington Building, Washington 5, D. C., William L. McGovern, 1707 H Street, Northwest, Washington 6, D. C., Attorneys for Complainant.

[fol. 294] *Duly sworn to by Matthew S. Crinkley. Jurat omitted in printing.*

[fol. 295] Order of the United States Maritime Commission of January 2, 1948 approving agreements. Omitted. Printed side page 14 ante.

[fols. 296-301] Agreement No. 4490-6. Omitted. Printed side page 15 ante.

[fols. 302-303] Agreement No. 7920-1. Omitted. Printed side page 26 ante.

[fol. 304] EXHIBIT "C" TO COMPLAINT

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 47-749

ISBRANDTSEN CO., INC., PLAINTIFF

against

UNITED STATES OF AMERICA, NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE, CONTINENTAL NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE, A/S J. LUDWIG MOWINCKELS REDERI, BLACK DIAMOND STEAMSHIP CORP., COMPAGNIE GENERALE TRANSATLANTIQUE, COMPAGNIE MARITIME BELGE, CUNARD WHITE STAR LTD., ELLERMAN'S WILSON LINE, LTD., DAMPSKIBSSELSKABET AFT 1912 A/S N. V. NEDERLANDSCH-AMERIKAANSCHE STOOMVART MATTSCHAPPIJ, UNITED STATES LINES COMPANY, WATERMAN STEAMSHIP CORPORATION, LYKES BROS. STEAMSHIP CO., INC., SOUTH ATLANTIC STEAMSHIP LINE, INC., AND UNITED STATES MARITIME COMMISSION, INTERVENOR, DEFENDANTS

ORDER GRANTING PRELIMINARY INJUNCTION

This cause having come on to be heard on plaintiff's motion for a preliminary injunction and upon considera-

remaining members are continuing said Conference as hereby agreed by them to be modified and amended * * *."

6. Neither the original Westbound Conference Agreement, No. 7000, approved February 16, 1940, and as amended approved, No. 7000-5, on May 7, 1948, nor Agreement No. 7920, approved July 1, 1947, between the French North Atlantic Westbound Freight Conference members and the Continental North Atlantic Westbound Freight Conference members, whereby they agreed mutually to maintain similar tariffs on cargoes of Belgian, Dutch or French origin, made mention of contract/non-contract rates, but the latter was modified by Agreement No. 7920-1 to provide for mutual imposition of each other's contract or non-contract rates, as might be applicable in any case, to cargo of such origin, and this agreement was approved by the Commission on August 24, 1948.

[fol. 306] 7. In approving these agreements the Commission followed its established practice of acting without holding adversary hearings.

8. Pursuant to the approved Conference agreements, the defendant steamship lines, through their Conferences, are presently about to require all shippers to contract to employ Conference lines exclusively on pain of being charged 20% higher tariffs if they fail so to contract. Once having contracted, any shipper who breaches by shipping goods via an independent non-Conference line will be required to pay to the Conference a penalty equal to twice the amount of freight that would have been payable under the contract in respect of the shipment constituting the violation, and will thereafter be denied the lower contract rates.

9. Plaintiff and its predecessors have been engaged in the North Atlantic carriage since 1931, and the institution of the proposed exclusive patronage dual tariff system would greatly injure its business as an independent carrier.

Conclusions of Law

1. The court should not at this stage pass on the validity of the agreements before the Commission, in accordance

with its established procedure, has had an opportunity to pass thereon in any adversary proceeding.

2. Were the defendant carriers to institute their exclusive patronage system pending the Commission's decision upon such a proceeding, the plaintiff would be gravely prejudiced.

3. To preserve the status quo, an injunction as prayed should issue, conditioned on the plaintiff's diligent prosecution before the Commission of a complaint challenging the validity of the agreements.

4. Defendant carriers' motion to dismiss the action should be denied.

Wherefore, it is hereby

Ordered that the prayer of the plaintiff for a Preliminary injunction be, and it hereby is, granted, on condition that plaintiff shall within twenty days from the entry of this order, file and thereafter diligently prosecute before [fol. 307] the United States Maritime Commission a complaint challenging the validity of the Conference Agreements numbered 4490-6 and 7920-1. And it is further

Ordered that, pending the filing of said complaint and its consideration, and the filing and publishing of reports, decisions and orders of the United States Maritime Commission, and its examiners and agents, on and pertaining to said complaint to be filed before said Commission, or until further order of this Court, defendants North Atlantic Continental Freight Conference and Continental North Atlantic Westbound Freight Conference, and the defendant steamship lines, members of said two Conferences, their agents, servants, employees, attorneys and all persons in active concert or participation with them, are hereby restrained from taking any steps to execute or effectuate any exclusive patronage contracts with shippers, heretofore or hereafter entered into, or to put into effect the contract rate system, or to compel, induce or persuade shippers in said North Atlantic trades to execute or effectuate such contracts, or enter into such contracts with shippers, whereby the shipper, directly or indirectly agrees to effect all his transportation requirements exclusively by means of the member lines of the two defendant Confer-

ences, under penalty of being assessed freight rates higher than the rates currently prevailing, if he patronizes plaintiff, or any other penalty; and it is further

Ordered that, pending the filing of said complaint by plaintiff and its consideration, and the filing and publishing of all reports, decisions and orders of the United States Maritime Commission, and its examiners and agents, on and pertaining to said complaint, or until the further order of this Court, the operation of those provisions of Conference Agreements numbered 4490-6 and 7920-1 purporting to authorize said Conferences to provide contract and non-contract rates shall be suspended; and it is further

Ordered that the motion, dated November 18, 1948, to dismiss the Complaint herein, filed by the defendant steamship lines herein, be, and the same hereby is, denied; and it is further

Ordered that said Preliminary Injunction is hereby granted on condition that plaintiff, Isbrandtsen Co., Inc., [fols. 308-309] continue in full force and effect, during the pendency of this Preliminary Injunction, the security heretofore given on the issuance of the Temporary Restraining Order herein. Nothing herein contained shall prejudice any defendant from applying to the court for an increase of the security hereby ordered upon proper showing.

Dated, January 7th, 1949.

/s/ Jerome N. Frank, United States Circuit Judge, /s/ Simon H. Rifkind, United States District Judge, /s/ Samuel H. Kaufman, United States District Judge.

[fol. 310] BEFORE THE UNITED STATES MARITIME COMMISSION

[Title omitted]

ANSWER OF CORRESPONDENT CARRIERS TO COMPLAINT—

Filed February 1, 1949

For their answer to the complaint herein, the respondent carriers as severally concerned allege as follows:

I. They admit the allegations made in the first paragraph of the complaint.

II. Subdiv. 1. They deny that North Atlantic Continental Freight Conference is a respondent herein, and allege that it is improperly named as such. They admit that the several common carrier steamship line respondents described as members of said Conference are such and that the copies of documents attached to the complaint as Exhibit A correctly set forth the provisions of the documents thereby referred to, which said several respondents allege speak for themselves as concern said Conference, the members of which meet at an office at 80 Broad Street, New York. Except as so admitted, said respondents deny each and every allegation contained in Paragraph II, Subdiv. 1 of the complaint.

[fol. 311] Said respondents further represent and allege that complainant has not referred to or annexed to its complaint all the relevant Conference documents, and they demand that the same be produced on the hearings herein.

II. Subdiv. 2. They deny that Continental North Atlantic Westbound Freight Conference is a respondent herein, and allege that it is improperly named as such. They admit that the several common carrier steamship line respondents described as members of said Conference are such and that the copies of documents attached to the complaint as Exhibit B correctly set forth the provisions of the documents thereby referred to, which said several respondents allege speak for themselves as concern said Conference. Except as so admitted, said respondents deny each and every allegation contained in Paragraph II, Subdiv. 2 of the complaint.

Said respondents further represent and allege that complainant has not referred to or annexed to its complaint all the relevant Conference documents, and they demand that the same be produced on the hearings herein.

II. Subdivs. 3-14 inclusive. They severally admit incorporation as alleged but deny the relevancy and materiality of the allegations as to offices which in certain instances are incorrect and are therefore denied.

III. They admit the allegations of Paragraph III of the complaint as concerns themselves as members of conferences, but they deny that the above-mentioned Conferences are respondents herein, and allege that they are improperly named as such.

IV. They admit the allegations of Paragraph IV of the complaint so far only as concerns the filing of a complaint by complainant in the United States District Court, which document speaks for itself in respect of the matters thereby presented to said Court, which matters said respondents allege differ somewhat from the characterization thereof in said Paragraph IV.

V. They deny the allegations of Paragraph V of the complaint except that they admit that the United States Maritime Commission intervened in the aforesaid District Court action.

VI. They admit the allegations of Paragraph VI of the complaint.

VII. They admit the allegations of Paragraph VII of the complaint.

VIII. They admit the allegations of Paragraph VIII of the complaint herein so far only as concerns the filing of the same and the statements and contentions therein made, which statements and contentions under the subheadings [fol. 312] (a), (b) and (c) said respondents deny and oppose. Said respondents deny that the complaint herein is in accordance with the provisions of the District Court's order of January 13, 1949, and allege that it falls short of compliance with the same.

IX. Further answering, said respondent carriers represent and allege:

The contract-non-contract rate practice is a freight rate practice which is subject to regulation by the Maritime

Commission according to the facts and circumstances of particular cases and situations in the foreign commerce of the United States as the same shall adequately be made to appear by relevant and material evidence from time to time in relation to pertinent provisions of the Shipping Act, 1916, as amended, other than either Sec. 14 or Sec. 15. The legal validity of said contract rate practice is not conditional upon approval thereof under Sec. 15 of said Act, nor is approval under said Sec. 15 first required before said contract rate practice is employed or after it is employed by way of confirmation thereof. Said contract-non-contract rate practice has been in regular and consistent use by ocean carriers in greater or lesser degree for many years from before 1914 when the so-called "Alexander Committee Report" was issued, and on the basis of which after full consideration in Congress the Shipping Act, 1916, was developed, formulated and enacted. Said report dealt specifically with said contract rate practice and in the sense of approval thereof. Said practice was not excluded by any provision of said Shipping Act. Said contract rate practice, although to a large extent temporarily in suspense until recently because of the World War, has been and now is practiced by the members of most of the approved Conferences in the foreign trade. In many instances it has been upheld by the Maritime Commission after full investigation and consideration of the relevant facts and the bearing and implications of the same concerning the foreign trade of the United States; the most recent instance of Maritime Commission approval is Docket 648, *Pacific Coast European Conference Agreement*, 3 USMC 11. The contract rate practice has had wide approbation and the great majority of shippers have sought the contracts and participated in the practice as being in their judgment the best method to provide stability and regularity of steamship service in aid of their foreign trade transactions. Through stability of rates and thus avoiding unnecessary and disastrous rate wars with related questionable practices, the participating carriers have prevented undue dissipation of their revenues and prejudice to the carrier service which in the public interest it is their purpose to maintain. The carrying out of said contract rate practice is intended to be and is distinctly in aid of the purposes of the laws provid-

ing for a strong American merchant marine. The con-
[fols. 313 314] tract rate practice as contemplated by the respondents is not directed to prejudicing complainant or any other carrier. The approved Conference agreements to which carrier respondents are parties provide for admission of other qualified carriers on application, and each and every carrier on admissions is entitled to full participation in the rate contracts. Complainant is not obliged to join either of the Conferences, although free to do so without any obstruction or prejudice, notwithstanding that it has chosen not to do so it takes the position in substance and essence that it is entitled to be freed by order of this Commission from the competition of other carriers who choose to associate themselves in the aforesaid approved Conferences.

Wherefore, respondent carriers pray that the Commission investigate fully and impartially all the relevant facts and circumstances relating to the contract rate practice and after due consideration of all the same make an order dismissing the Complaint herein, and that said respondents have such other and further relief as to the Commission may seem just and proper.

Dated: New York, N. Y., February 17, 1949.

A S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corp., Compagnie Generale Transatlantique, Compagnie Maritime Belge, Cunard White Star, Ltd., Dampskibsselskabet af 1912 A S, N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij, United States Lines Company, Waterman Steamship Corporation, South Atlantic Steamship Line, Inc. By Roscoe H. Hupper, Burton H. White, Their Attorneys, 27 William Street, New York City.

Certificate of service (omitted in printing).

[fol. 315] Before the United States Maritime Commission

Motion for Expedited Procedure

I. On February 1, 1949, complainant, Isbrandtsen Company, Inc., filed its complaint with the Commission alleg-

ing that so much of Commission orders and approvals dated January 2, 1948 and August 24, 1948 as purport to authorize the North Atlantic Continental Freight Conference in Conference Agreement No. 4490-6 and the Continental North Atlantic Westbound Freight Conference in Conference Agreement No. 7920-1 to employ the contract non-contract, exclusive patronage contract rate system in the North Atlantic trade were null and void and praying the Commission to vacate its approval of so much of the aforesaid conference agreements as purported to authorize the use of such exclusive patronage contract rate system.

II. The complaint challenged the validity of such orders and approvals on the sole ground that under Sections 14 and 15 of the Shipping Act of 1916 (46 U. S. C. 812, 814) the Commission lacked authority and discretion under any circumstances to approve the use of the exclusive patronage contract rate system.

III. Because the complaint raises only a simple legal question of statutory construction, and because it poses [fol. 316] no question involving the exercise of Commission discretion upon the basis of any facts, which might be found, oral hearings in this case would serve no useful purpose and would delay the Commission's final determination of the single question of law involved, contrary to the admonition of diligence in the Order of the District Court, pursuant to which Order this complaint was filed.

Wherefore complainant respectfully moves

1. That the full Commission, rather than one or more examiners, preside at the hearing herein, to hear arguments and to receive briefs on the issue of law involved.

Dated: Washington, D. C., February 16, 1949.

Respectfully submitted, John J. O'Connor, 423 Washington Building, Washington 5, D. C., William L. McGovern, 1707 H Street, Northwest, Washington 6, D. C.

[fol. 317] Certificate of service (omitted in printing).

[fol. 318] BEFORE THE UNITED STATES MARITIME COMMISSION

[Title omitted]

ANSWER TO COMPLAINANT'S "MOTION FOR EXPEDITED PROCEDURE"

For their answer to complainant's motion dated February 16, 1949, respondent carriers as severally concerned allege as follows:

I and II. They admit the allegations made in Paragraphs I and II of the motion but refer to the complaint on file with the Commission for the contents thereof in respect of what the same alleges and fails to allege.

III. They deny the allegations made in Paragraph III of the motion.

[fol. 319] IV. Further answering, said respondent carriers represent and allege: They support complainant's purpose of expedition. They deny that this purpose would be served by granting complainant's motion. The matters presented by the complaint and involved therein or necessarily implied therefrom are not alone matters of law as alleged by complainant but are in the true and broad sense matters of fact or matters of both fact and law in relation to the foreign commerce of the United States. The same inevitably require detailed and careful investigation, hearings, argument and consideration, to the end that the Commission shall become qualified and enabled to make true, adequate and lawful findings, conclusions and orders. This course is in the interest of complainant, respondent carriers and shippers, as well as in the general public interest in relation to said foreign commerce. The considerations and issues involved in the foregoing are set forth more at length in Paragraph IX of respondent carrier's answer to the complaint on file dated February 17, 1949 to which they refer and incorporate herein.

V. Respondent carriers further allege that the hearing procedure proposed by complainant does not conform to the Rules of the Commission or to the procedure of the Commission in reaching earlier decisions in respect of contract rates and other questions in the same or similar

premises; and that said proposed procedure is not calculated to meet the requirements of the U. S. District Court's order dated January 13, 1949. Neither would it meet the requirements necessarily implied from relevant decisions of the United States Supreme Court, among which respondent carriers instance the *Swayne & Hoyt* case, 300 U. S. 297, and the *U. S. Navigation Co.* case, 284 [fol. 320] U. S. 474.

Wherefore, respondent carriers pray that the complainant's motion dated February 16, 1949 be denied.

Dated: New York, N. Y., February 24, 1949.

A/S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corp., Compagnie Generale Transatlantique, Compagnie Maritime Belge, Cunard White Star, Ltd., Dampskibsselskabet Af 1912 A/S, N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij, United States Lines Company, Waterman Steamship Corporation, South Atlantic Steamship Line, Inc., By: Roscoe H. Hupper, Burton H. White, Their Attorneys, 27 William Street, New York City.

Certificate of service (omitted in printing).

[fols. 321-322] BEFORE THE UNITED STATES MARITIME COMMISSION

[Title omitted]

ORDER DENYING MOTION—March 8, 1949

Complainant having filed Motion for Expedited Procedure, moving that the full Commission rather than one or more Examiners preside at the hearing herein, to hear arguments and to receive briefs on the issue of law involved; and respondents having filed reply thereto; and due consideration having been given; and it appearing that important questions of fact as well as of law are involved in this proceeding;

It is ordered, That the motion be, and it is hereby, denied; and

It is further ordered, That the hearings herein be conducted by the Commission's Office of Trial Examiners in accordance with applicable rules of procedure.

By the Commission:

R. L. McDonald, Asst. Sec't'y.

[fol. 323] Before the United States Maritime Commission

[Title omitted]

Transcript of Proceedings at Prehearing Conference

Room 4823, Department of Commerce Building, Washington, D. C., April 5, 1949.

The above entitled matter came on for hearing, pursuant to notice, at 2:00 o'clock p. m., before C. W. Robinson, Examiner.

Appearances:

John J. O'Connor, 423 Washington Building, Washington 5, D. C., appearing for complainant Isbrandtsen Co., Inc., 26 Broadway, New York, New York.

William L. McGovern, 1707 H Street N. W., Washington, D. C., appearing for complainant Isbrandtsen Co., Inc., 26 Broadway, New York, New York.

Roscoe H. Hupper, 27 William Street, New York, New York, appearing for respondents North Atlantic Continental Freight Conference, et al.

Henry A. Cockrum, appearing for intervenor, Secretary of Agriculture of the United States, room 1305 South Building, United States Department of Agriculture, Washington, D. C.

Joseph E. McDowell, appearing for intervenor Department of Justice, room 3229, Department of Justice, Washington, D. C.

[fol. 324] Paul D. Page, Jr. and George F. Galland, appearing for United States Maritime Commission.

[fol. 325] PROCEEDINGS

Examiner Robinson: Let us come to order, please.

This is a prehearing conference in Docket 684, Isbrandtsen Co., Inc., vs. North Atlantic Continental Freight Conference, et al, called by notice dated March 25, 1949, pursuant to Section 201.59 of the Commission's rules of procedure.

Who appears for complainant?

Mr. O'Connor: Isbrandtsen Company, Inc., is represented by John J. O'Connor and William L. McGovern.

Examiner Robinson: Who appears for respondents?

Mr. Hupper: Roscoe H. Hupper, representing the member lines of the mentioned Freight Conferences.

Examiner Robinson: Any appearances by intervenors?

Mr. Cockrum: Mr. Examiner, my name is Henry A. Cockrum of the Office of the Solicitor, United States Department of Agriculture, appearing for the Secretary of Agriculture of the United States. We have filed a petition of intervention. I do not know if action has yet been taken by the Maritime Commission on that petition.

Examiner Robinson: No, sir, it has not. Have you put in your appearance here this afternoon?

Mr. Cockrum: I have.

Examiner Robinson: You want to do it conditionally in case the Commission will approve your petition?

Mr. Cockrum: That is right.

[fol. 326] Mr. McDowell: My name is Joseph E. McDowell, representing the Department of Justice. The Department of Justice has filed petition for intervention. No action has been taken on it. It was filed just five minutes ago.

Examiner Robinson: Where did you file it?

Mr. McDowell: In the office of the Secretary. I am appearing on behalf of the Department of Justice conditionally in the event petition for intervention should be granted.

Examiner Robinson: Are there any further petitions to intervene?

Mr. Galland: The Commission Solicitor, Paul D. Page, Jr. and I, George F. Galland, appear for the Commission.

Examiner Robinson: Are there any further appearances?

In the absence of anything by the parties at the moment there are several things relating to pleadings which we might discuss. There has been some little controversy among attorneys as to the proper title of this case.

Mr. O'Connor, would you like to say something in relation to that?

Mr. O'Connor: We feel that there is some question about that word "complaint" because this is not an action for reparations, but the complaint as filed bears the proper title following the direction or suggestion or whatnot of the Court that we return to the Maritime Commission and challenge the validity of these agreements which we seek from you in court. We believe that we entitled [fol. 327] it in the matter of these agreements as other proceedings before this Commission have been entitled and we believe that the adoption of its own ideas by the respondent carriers in filing their answer and blanketing in another description in the caption is without justification and we move or request that it be stricken from the caption and that the proceeding be continued under the title and caption as appears in the original paper called the complaint.

Examiner Robinson: Mr. Hupper, have you anything to say?

Mr. Hupper: I understood the opinion of the three judge district court mentioned an adversary proceeding and that our friend Mr. Isbrandtsen was directed to bring such a proceeding. The only adversaries or set of adversaries that Mr. Isbrandtsen could have were members of those two conferences. Those conferences are not incorporated; they have no power either to be sued or to sue. Members of the conferences, if they are entitled to be called members, are authorized to meet together for certain prescribed purposes. The conference is a meeting of separate lines which alone can sue or be sued. The fact that the conference agreement exists, approved by this Commission, does not mean that the conferences are subject to suit.

In the matter of the agreements, as Mr. O'Connor has entitled his complaint, it of course means something but it does not mean all that has to be understood in order for an

[fol. 328] adversary proceeding to get underway and continue. For that reason, we, acting for the respondents, put the names of the respondents in the subheading and anybody looking at the complaint itself will see those several lines were named as the interests that were opposed to the complaint in addition to the heading of the complaint so-called.

Examiner Robinson: I take it then inasmuch as the complaint does describe in the body the individual lines as well as the conferences, it would really be immaterial as far as the title of the case is concerned at this stage, but I thought I would let each one of you express his views on it.

Mr. Hupper: The title never controlled a case.

Mr. O'Connor: We cannot let the record go on the contention of Mr. Hupper, which is not new, that these voluntary associations are not suable. They are very much suable like the labor unions and many others. They are so suable that we sued them in the United States District Court in New York, which Court considered them so suable that it enjoined them and they presently stand enjoined. If they should proceed in violation of the injunction, we would take the proper steps against the conferences.

Examiner Robinson: Of course I think we could divide action in the District Court from action in a proceeding here because we have to proceed wholly by virtue of the statute and section 22 says that anybody aggrieved can bring a proceeding against a common carrier. I just [fol. 329] like to point that out to you at this stage.

Mr. O'Connor: Let it get firmly established in the beginning that we are not proceeding under Section 22 whatsoever.

Examiner Robinson: Howsoever did you get in the case?

Mr. O'Connor: We are following the Court's direction.

Examiner Robinson: The Court cannot give you any authority to do what the Congress has not given you authority to do under the authority of the Shipping Act.

Mr. O'Connor: We are here. You claim we should not be here but we are here.

Examiner Robinson: I do notice one other thing in the title. I am sure this is an inadvertent omission on your

part, Mr. O'Connor. You mentioned the second conference which starts after the slash in the next to the last line of the title. I think you left out the word "Continental" before "North Atlantic Westbound."

Mr. O'Connor: I do not know that has ever been called that.

Examiner Robinson: You describe it accurately when you go down into the body of your complaint. It is not an error. I am sure you left it out.

Mr. O'Connor: May it be considered as amended.

Examiner Robinson: Mr. O'Connor, there is one thing I [fol. 330] should like to ask you, if you care to elaborate on it. On page 5 of your complaint you say that "the authorization of the contract and non-contract rate system by the Commission would deprive the complainant herein of its property without due process of law contrary to the fifth amendment of the Constitution of the United States." Would you like to let it stand as that or would you like to elaborate on it a little more for the pleadings? I frankly am not too sure I know what you are driving at.

Mr. O'Connor: I do not think it has to be elaborated for the purpose of the pleading so much. I am sure that the Constitutional lawyers on the other side know what we are talking about. As we develop the legal points involved, I think it will appear.

Examiner Robinson: I see. That is all I have at this moment just on the preliminary technicalities. Do you gentlemen have anything you would like to suggest?

Mr. Hupper: May I ask a question, Mr. Examiner?

Examiner Robinson: Yes.

Mr. Hupper: Am I correct in my understanding that the rules of the Commission applying to intervention require there should be an allegation that the proposed intervention will not in any way broaden the issue presented by the complaint and the answer?

Examiner Robinson: That is my general recollection on [fol. 331] the subject. I shall be glad to look it up.

Mr. Hupper: I will not ask you to do that. I just wanted to confirm the understanding of headquarters, so to speak.

Examiner Robinson: That is my understanding.

Mr. Galland: They cannot unduly broaden it.

Mr. Hupper: In glancing through this petition of the Department of Justice just handed us here, I note that an effort appears to be made to transform this matter, Docket 684, into an anti-trust proceeding. It seems to me that does unduly broaden the issues and I object to that intervention on that ground. I move to strike it from the files. I think that this case is a case of Mr. Isbrandtsen and the Conference members with respect to the matters alleged in the complaint. I deem it to the interest of the respondent carriers as well as the Isbrandtsen Company that we stick very closely to the subject matter of that complaint which is filed here by direction of the Court.

In the court proceeding the Department of Justice announced that it stood aside, took no part in it. The Maritime Commission itself intervened there and proposed the action that was finally taken by the Court. I suggest that this proceeding, Docket 684, be not made or not be permitted to be what I might describe as a happy hunting ground for the Department of Justice in respect to the anti-trust laws. This case now pending here should not be made the vehicle of what would substantially be a sepa-[fol. 332] rate proceeding by the Department of Justice and the proceeding proposed by this petition more or less matches proceedings already taken by it against another group of carriers.

I speak with the utmost seriousness on this that this petition should be excluded from this proceeding.

Examiner Robinson: Mr. McDowell?

Mr. McDowell: I, too, have considered the rule but I think the purport of the rule is that the intervention may be permitted. It appears that it will not broaden the issues. It is not the intention of the Department of Justice to attempt to broaden the issues. If that is the substance of the objection, we can cure that.

With respect to the statement of the anti-trust aspects of the matter, I think the objection is not well taken for the reason that the rules of the Commission require that the intervenor or petitioner for intervention state the grounds of his interest and of course the grounds of interest of the Department of Justice arise from the duties

and responsibility which the Department has with respect to anti-trust matters.

That statement is not intended in any way, and I think properly read will not appear to be intended, to transform the instant proceeding in an anti-trust action but merely to state the position and the basis of the interest of the Department of Justice with respect to the matter.

[fol. 333] Examiner Robinson: Inasmuch as I am not passing on the petition at this stage, the remarks will be noted on the record.

Mr. Hupper: I wish to refer, if I may, to paragraph 4, page 2, of this intervention document of the Department of Justice. This statement, which reads as follows, seems to me to be a rather bold statement:

> "That because of their property interests the private parties to this proceeding are not primarily concerned with the substantial publications involved; and that the end of justice and orderly administration of law require that the Department of Justice, because of the important publications involved and the Department's substantial interest therein, be permitted to participate in the hearings required for the proper determination of such issues."

That is an effort, as I see it, to transform this into a public case instead of a private case that is on file here. I object to it.

Mr. O'Connor: This is not a private case in any sense. The public is very vitally interested in this case. The commerce of the United States is involved. We do not think it is a private case.

Mr. Hupper: You sued for Mr. Isbrandtsen. You did not sue in the name of the government.

Mr. O'Connor: We are acting pro bono publico.

[fol. 334] Mr. McDowell: The Department of Justice is content to have the Commission pass on the question as to whether or not the anti-trust question present here sufficiently involves the public interest to justify permitting participation by the Department of Justice.

With respect to the question of alleging as to whether or not the intervention will broaden the issues, my at-

tention has been called to a copy of the Commission's rules 201.82 which confirms my statement made a while ago that intervention may be permitted unless it appears that it would broaden the issues.

Mr. Hupper: I gather the point is reserved, Mr. Examiner?

Examiner Robinson: Yes, it is.

Mr. Galland: What is the position of the Department of Agriculture under their petition to intervene?

Mr. Cockrum: Mr. Examiner, I should like to reserve a response to that question pending further developments of the case.

As of the present interest, our position is that of an intervenor insofar as our interests may be affected. I should like to reserve statement until a later date with respect to the extent of the Department's active participation on the side of the complainant.

Examiner Robinson: Particularly in view of your conditional appearance here now?

Mr. Cockrum: Especially in view of that.

[fol. 335] Mr. Hupper: Have you filed any document?

Mr. Cockrum: It has been filed.

Mr. Hupper: May I have a copy?

Mr. Cockrum: Yes.

Mr. Galland: I have no copy of the rules before me but I remember no provision that provides for intervention of parties as interests may appear. My recollection is that he states his position when he intervenes.

Examiner Robinson: It is historical, I know, that it has been done many times.

Mr. O'Connor: Mr. Examiner, may I place on the record at this time this query? I do not expect the distinguished Examiner to answer it but this is merely a private proceeding between one Isbrandtsen and 12 steamship operators. How does the Maritime Commission appear in it with its counsel?

Examiner Robinson: You might ask the counsel.

Mr. Page: I shall be glad to answer that question for the record.

Under the historical practice the Maritime Commission and its counsel are permitted to intervene in any proceed-

ing and to take any position which in their opinion the facts in the case warrant. When they do so they act as counsel and they are not permitted to advise the Commission as to its decision. They speak only in open court.

Mr. O'Connor: I trust the other departments of the [fol. 336] government will be granted the same courtesies.

Examiner Robinson: So far as I am concerned, everybody here has the courtesy.

Mr. Hupper: It depends somewhat on what the statute says. It is not my business to advise the Department of Agriculture but I would assume from this document that their position is as stated therein.

Examiner Robinson: Are there any further things anyone wishes to consider?

Mr. O'Connor, did you request this? If you have anything that you want to go forward with, it is quite all right. Did you request this prehearing conference?

Mr. O'Connor: No, I did not request it. It developed in a conversation I had with Mr. Basham that it might be advisable we sit around.

Examiner Robinson: Are there any further points anyone wishes to bring up? Are there any statements or testimoney anyone wants to agree to or are you going to fight it on the last line?

Mr. O'Connor: The complainant does not see any need for any testimony whatsoever, of course. We think this a question of law on the documents on file and that is the interpretation of the power and authority of the Commission under Section 14. We cannot see what any testimony or findings of facts or whatnot of a similar nature will add to it in arriving at the authority of the Commis- [fol. 337] sion challenging the validity of the agreements which they approve as the Court directed us to do.

Examiner Robinson: The only thing I can say is that I am bound by the law in the case so far, that the Commission has temporarily ruled there are important questions of fact as well as of law. We shall have to let it go at that for the time being.

Mr. McGovern: Would it be profitable for us to try to explore those questions of fact and see if it is possible to weed out the wheat from the chaff as to the type of tender

of proof we may make during the course of the hearing?

Examiner Robinson: You have every right in the hearing to ask anything you want.

Mr. McGovern: As the complaint indicates, we really tender two issues. The first is whether or not this exclusive patronage contract and non-contract system constitutes a discrimination or retaliation under subparagraph 3 of Section 14; and, secondly, if it does, whether or not the Commission has power to approve under 15 an agreement which contains that provision prohibited by Section 14. It was our thought that by tendering the basic documents themselves, namely, the conference agreements and the contracts tendered the shippers, that it would appear on the face of those documents that the conference is proposing to charge different rates to different classes of [fol. 338] shippers for the same transportation service, depending entirely on whether or not the shipper signs an exclusive contract, and that it followed necessarily from that on the face of the documents themselves that the contract system was at least discriminatory.

We think it important to point out to you that we raise no question whatsoever as to whether or not the contract system is unreasonably discriminatory or unjustly prejudicial. The only thing we raise in our pleading is whether or not the contract system on its face constitutes a discrimination.

Now in terms of Mr. Hupper's response, it constitutes a discrimination or retaliation as set forth in subparagraph 3 of Section 14. Now I will confess that I am not entirely clear from Mr. Hupper's response as to what he thinks the factual propositions are that are raised by those pleadings and it occurs to me it might be helpful in terms of getting our evidence in hand if we had some slight exploration of that situation.

In our judgment we pose only that one issue or question: Does the contract-non-contract system constitute on its face a discrimination and retaliation under Section 14 against a shipper who patronizes any other carrier? I would contend on the face of the documents that it does precisely that. We are simply unclear as to what is the

scope of the factual examination, on that point at least, [fol. 339] that Mr. Hupper apparently proposes to require.

Examiner Robinson: Mr. Hupper, would you care to say anything?

Mr. Hupper: Well, just a word or two. The answer for the respondent carriers is reasonably explicit on that point. It is a matter of facts involved, I should think quite a wilderness of facts if we are going to meet the charges of Mr. Isbrandtsen about the damages they sustained by reason of this contract rate practice. That was the basis of their complaint in the District Court. They said they were suffering damages. They said that but they did not show how. The District Court itself when it made its decision and order said matters of fact had to be dealt with, as I recall the opinion.

I might add in conclusion this very short statement, that if the matter had been so simple, as Mr. McGovern now suggests it is, the District Court fell down in its duty in not making an immediate decision on the question of law. The Court said very briefly and positively that there were certain things they should not decide now. The opinion, as I recall it, mentions matters of fact that had to be explored.

After all, whatever variation or collateralizing is indulged here, this remains a controversy between Isbrandtsen and the Conference lines with respect to damage Isbrandtsen alleged they are suffering because of this contract rate practice. That question is not determined, neither is it disposable. The proposition is now put for- [fol. 340] ward formally before the Commission. The Commission made its order that it could not be expedited as proposed by Mr. Isbrandtsen because matters of fact were involved which required full examination.

It is my idea that you cannot do justice to Isbrandtsen, you cannot do justice to the Conference lines, you cannot do justice to the shipping public without a full examination of the facts. I will say that if Isbrandtsen is unjustly prejudiced or discriminated against, and I do not think the situation is discrimination at all for reason of anything the Conference lines are doing, I would hope I would be among the first to advise them that they should reform.

The shipping public has not been heard at all. It is perfectly well known that vast numbers of shipping people are eager to have these contracts. Many of them did have these contracts when the proceeding was begun and it makes me just a little, let me say, jocularly disturbed to note the eagerness apparently to exclude the shipping public from any talk about this. The public interest will be developed factually, and legally as well, by what various shipping interests have to say.

I note that there are two interventions here. I think one is by Himala International, the three-in one, and also the Pacific Coast Borax Company, and I believe both on the side of Isbrandtsen. If those gentlemen are intervening to talk about their interests from the shipper's [fol. 341] point of view, why is it that the rest of the shipping public should not be heard here? I object to their exclusion.

It is my purpose to see that the facts are fully developed from every witness competent to develop them, including Mr. Isbrandtsen himself, who is very well informed and a most capable and competent shipping man. I think it would be just a joke, and that is too soft a word for it, for this Commission to proceed on the theory that all you have to do is look at some papers and pronounce matters of law. I am not interested in participating in any such proceeding.

Mr. O'Connor: May I answer that on the question of damage?

Examiner Robinson: Certainly.

Mr. O'Connor: This action was brought in the United States Court by Isbrandtsen against three Conferences and their lines because of a threatened prospective damage. There was no claim that damage had yet occurred because this exclusive patronage contract rate system had not substantially been in effect for some time. Notices were sent out that it would be put into full effect on some thousands of items on the 1st of November. So the action was brought to obtain the aid of the Court in enjoining the institution of the system in those trades and the Court has already found, and necessarily so, as a basis of its injunction, that Isbrandtsen would be damaged if this [fol. 342] system were put into effect. There is no ques-

tion of damage in this case with respect to Isbrandtsen nor will witnesses be called to prove that they have been damaged.

Just this afternoon I filed documents with the Secretary of the Commission protesting the approval by the Commission of two Conference agreements No. 8040 and 8050 containing the language permitting them, as in the case before the Commission here, Docket No. 684, to use the contract-non-contract rate system. The sole question is whether the Commission has authority to approve such Conference agreements. There can be no findings of fact in those two cases because there have been no experiences in those two cases. The situation here is not much dissimilar because who in the court but Isbrandtsen was against the threatened damage? And the Court so found that he would be damaged. That is static, there cannot be a going behind that. The Supreme Court yesterday approved what the Court found and dismissed the appeal from the injunction.

Mr. Hupper: I think your statement there is a little broad, brother O'Connor. I did not hear they approved anything at all. All I heard was they dismissed the appeal.

Mr. O'Connor: The appeal was made from the injunction on the ground there was no damage, no proof of irreparable damage, no right to the injunction, the Court had no jurisdiction, and several other contentions.

Mr. McGovern: On the question of damages may I add [fol. 343] this thought, that the question of damages is not present at all, we think, in this Commission proceeding. It is true that was an element of course in the case up in New York. That was the District Court case and not this proceeding.

Examiner Robinson: You are not asking for damages in the sense of reparation?

Mr. McGovern: That is right. But going one step further, it is our contention that even if the contract-non-contract system conferred benefits on shippers, that it still would be unlawful under Section 14 because it would still be discriminatory and prohibited by the Act. So the case would necessarily turn on the issues other than the question of damages.

Examiner Robinson: I should like to make a little sug-

gestion to you here. There may be nothing to it but throughout the hearing and brief stage, I should like you gentlemen to consider very carefully the right of Isbrandtsen suing as a common carrier and not as a shipper having suffered any damage under Section 14 at all. I have not made up my mind on it because obviously nothing has been presented, but if you read that section it is conceivable that the shipper himself must be the one who suffers the damage. I just cast that out to you for what it might be worth.

Mr. Hupper: With regard to this matter of damage, if I may, I should like to say that Mr. Isbrandtsen would not have been entitled to go into the District Court ex-[fol. 344] cept on the charge of damage, he would not be entitled to come here except on the charge of damage. It is their case and not just indulging in certain philosophies with respect to the Shipping Act.

In view of what Mr. O'Connor said just now, that it was speculative and not actual, it is all the more necessary to have testimony in this case on the alleged damage this contract system does to Mr. Isbrandtsen.

Examiner Robinson: This is an informal hearing. I will let everybody say what he wants. I am bound to let the facts come in on which the Commission has already ruled.

Mr. McGovern: With regard to the suggestion that we were trying to exclude shipper witnesses, may I suggest nothing is further from our thoughts? I was not, myself, referring to the witnesses to be called, whether they were shippers, carriers or any other witnesses or number of witnesses. I assume the function of the hearing is to see if we cannot simplify the hearings. I am not talking about the witnesses or types of issues but the issues to which the testimony will be directed. I am suggesting that the first issue we pose in our pleading is the question of whether or not the contract-non-contract system is discriminatory.

Mr. Hupper: Against whom?

Mr. McGovern: Is discriminatory against no one; for the time being, just per se discriminatory.

[fol. 345] Examiner Robinson: Is there anything further?

Mr. McGovern: May I also, Mr. Examiner, question whether or not you will receive documents on file with the Commission and take judicial notice of them?

Examiner Robinson: I suggest that on things like agreements and all it would not be necessary. I think you gentlemen would concede they are on file. You would not have to introduce them and I could take notice of them and refer to them. Would that be all right?

Mr. Hupper: The more you can shove in from the Commission's files the better.

Mr. Galland: We ought to stipulate that stuff in because there was a Supreme Court decision that the Interstate Commerce Commission could not take official notice of tariffs on file with it.

Mr. McGovern: I should like to ask whether or not the conference tariffs on file with the Commission contain actual copies of the contracts tendered the shippers. We affixed to our complaint in New York a contract affixed as Exhibit D. I do not know if it has been filed by the Commission.

Mr. Hupper: I do not know about that, Mr. McGovern, but anything you want us to produce we shall be happy to do so.

Mr. McGovern: I wonder, sir, if we might stipulate the Conference agreements and the actual contracts tendered the shippers would be judicially noted by the Commission if in fact they have been filed with the Commission.

[fol. 346] Mr. Hupper: I am willing to agree on behalf of the respondent carriers that anything on file with the Commission, whether contract forms, conference agreements or any amendments, shall be deemed here for the use of everybody.

Mr. O'Connor: Further than that, if by any chance these conferences did not annex to their tariffs the form of shipper's agreement, as it is sometimes called, the contract and non-contract agreement, will respondents stipulate after proper investigation that the forms annexed to our complaint in court are correct?

Mr. Hupper: After checking up we will, if they correspond to that. If they do not, we will give you copies.

Examiner Robinson: As to these contracts, are you only interested in the present contract or something that might

have existed in prior years? I want to be sure we understand each other, that is all.

Mr. O'Connor: The contracts which have been offered to the shippers to be put into effect as of November 1, 1948. We understand from Mr. Hupper and other sources maybe that some of those contracts have been signed up but the Court enjoined the further signing of any of those contracts.

Mr. Hupper: We will provide the form, if that is not the one on your complaint.

Examiner Robinson: The ones that have already been [fol. 347] signed, I take it, are the same as the ones they did not sign and were prohibited from signing?

Mr. O'Connor: Yes.

Examiner Robinson: Is there any other stipulation you would like to make?

Mr. McGovern: I take it that no one is prepared to stipulate that the only issue tendered is whether or not the contract-non-contract system is discriminatory?

Examiner Robinson: We could not stipulate that anyway because it has already been decided that it involves other things.

Mr. McGovern: I did not think it had been decided.

Is it Mr. Hupper's intention to confine his tender of proof to the proposition that the contract-non-contract system is not discriminatory and not retaliatory, or is it rather his intention to tender proof showing that even if it is discriminatory and retaliatory, it is not unreasonably and unjustly so?

Mr. Hupper: On this subject I will say that you will have to wait and see. I do not quite agree to the form of your questions and I do not intend to give any answers that will correspond to them. My own view is that the factual situation here is very broad. I am talking now not only about the private interests on both sides but what is asserted to be a public interest. I shall do my best to confine myself to what is relevant. I think even under [fol. 348] that discrimination there will be quite a mass of facts that the Commission could consider.

Mr. McGovern: That statement, of course, by Mr. Hupper seems to be somewhat at loggerheads with his earlier

statement that this is a private litigation between Isbrandtsen and the Conference and private interests should not be present.

Mr. Hupper: I am talking about shippers' interests. I am not talking about the Department of Justice. I am talking about commerce.

Examiner Robinson: Would you venture a guess, Mr. Hupper, at this stage as to approximately how long your case might take?

Mr. Hupper: It depends on the extent of the complainant's case. I should think two or three days perhaps. I have not selected my witnesses.

Examiner Robinson: I assume you do not contemplate having too much. Is that so, Mr. O'Connor?

Mr. O'Connor: As we envision it at this moment, our present intention is to present what we believe is our prima facie case. Then we shall be guided, as to what, if anything further, we do on the presentation, by the respondents and the rulings by the Examiner. Of course we may contend that all factual testimony is irrelevant and immaterial, make all our objections to it, and reserve all our points as to such testimony. When the respondents have [fol. 349] completed their testimony, we may see fit without prejudice to our main contention to offer testimony in contradiction of what the respondents have put in.

Examiner Robinson: Of course, I was not in any way trying to pin any of you down. I was thinking in terms of setting a place for hearing and the time and we have to make these arrangements. I wanted to get an idea.

Mr. O'Connor: We would not have any idea as to the rebuttal testimony until the respondents had proceeded with theirs. If they took some considerable time and we were compelled to produce witnesses to testify to the contrary, that might take some little time.

Examiner Robinson: I take it no one else has anything they want to discuss as to when and where you would like to have the hearing?

Mr. Hupper: I should think, if I may make a suggestion in the first instance, that we might go to New York by reason of the fact that Isbrandtsen is there and respondents' lines are there and it is greatly to the convenience of the principal witnesses.

If I may make a suggestion as to time, I am as eager as anybody else to have it start as soon as possible, but one of my associates who will be with me in the case will be laid up for about three weeks or so. I suggest it might, through common convenience, be some time the end of the [fol. 350] first week in May.

Examiner Robinson: How does that sound to you, Mr. O'Connor?

Mr. O'Connor: Of course we are anxious to proceed as speedily as possible. We are respectful of the Court's admonition of guilty. We had a little earlier date than that in mind, but we do not control the situation.

Examiner Robinson: Obviously I want to do everything that will satisfy the most people. Speaking offhand, I do not think you would be inconvenienced too much because of the fact that the injunction is still running in your favor. Is that not true?

Mr. O'Connor: You did not intend it so but that sometimes is a rather offensive casuistry bandied about these halls very often. We are anxious to get back in court and get this legal question decided that has been tossed around for 30 years.

Examiner Robinson: I understand that, but as far as your actually suffering anything, inasmuch as the injunction is running in your favor, a few more weeks would not inconvenience you to that extent?

Mr. O'Connor: No. We hope the other side is going to push forward with all the vigor of its youth and enthusiasm.

As for the hearing, of course while Isbrandtsen is in New York it would be perfectly agreeable to us to start [fol. 351] the proceedings in Washington.

Examiner Robinson: If it is to be in New York, we will have to make arrangements for a room up there. We never know where we can get one and when. Suppose we leave that as the record shows now and we will let you know very promptly as to what we can do. I think we can work that out all right.

Mr. Hupper: Presumably in the first few days there will be quite a number of people wishing to attend. I think I ought to emphasize it would be better in the first instance to have it in New York.

Examiner Robinson: Is there anything further, gentlemen? Feel free to say what you want. This is very informal. If that is all, this prehearing conference is terminated and everybody will be notified, of course, as to the date and time of hearing.

(Whereupon, at 3:00 o'clock p. m. the prehearing conference in the above-entitled matter was closed.)

[fol. 352] Before United States Maritime Commission

Registered

Roscoe H. Hupper, Esq., 27 William Street, New York, New York.

Docket No. 684

Dear Sir:

Enclosed is a copy of the recommended decision in this proceeding. Exceptions to, or memoranda in support of, this decision may be filed with the Commission on or before October 20, 1949. For parties in the States of Washington, Oregon, and California, and for parties who reside beyond the continental United States, and their agents or attorneys, the time for filing exceptions or supporting memoranda expires October 25, 1949. See sections 201.197, 201.198, 201.211, 201.2, 201.3, 201.4, 201.91, 201.94, 201.95, and 201.96 of the Commission's Rules of Procedure, revised September 12, 1947.

Very truly yours, G. O. Basham, Chief Examiner, Office of Trial Examiners.

Enclosure.

[fol. 353] Before United States Maritime Commission

[Title omitted]

The proposed exclusive patronage contract/non-contract rate systems of North Atlantic Continental Freight Conference and Continental North Atlantic Westbound Freight

Conference should be found not to be in violation, *per se*, of section 14(3) of the Shipping Act, 1916. The complaint should be dismissed.

John J. O'Connor and *William L. McGovern* for complainant.

Roscoe H. Hupper and *Burton H. White* for respondents.

Joseph E. McDowell for United States Department of Justice, *Henry A. Cockrum* for United States Department of Agriculture, and *Hymen I. Malatzky* for Himala International, interveners.

Paul D. Page, Jr., Solicitor, and *George F. Galland* for the Commission.

RECOMMENDED DECISION OF C. W. ROBINSON, EXAMINER

On October 28, 1948, Isbrandtsen Company, Inc., hereinafter referred to as Isbrandtsen or as complainant, a common carrier by water operating, among other trades, between North Atlantic ports of the United States and ports in Belgium, Holland, and Germany, filed a complaint in the United States District Court for the Southern District of New York, praying (1) for a preliminary injunction restraining, enjoining, and suspending the operation and execution or the carrying out by North Continental Freight Conference and Continental North Atlantic Westbound Freight Conference and their member lines, of so much of Agreements Nos. 4490-6 and 7920-1, theretofore approved by this Commission in accordance with section 15 of the Shipping Act, 1916, hereinafter sometimes referred to as the Act, as purported to authorize the employment of the exclusive patronage contract/non-contract rate system, hereinafter referred to as the contract sys-[fol. 354] tem;[2] and (2) for the court, after hearing, to adjudge, order, and decree that the particular parts of the agreements are beyond the lawful authority of the Commission and wholly void under sections 15 and 14, respectively, of the Act, and that they be set aside, sus-

[2] Under the system, hereinafter more fully referred to, the shipper agrees to route all his shipments via conference vessels, in return for which he receives a lower rate.

pended, annulled, and the execution thereof perpetually restrained and enjoined.

In its order of January 13, 1949, the District Court concluded, among other things, that in accordance with established procedure, it should not pass on the validity of the agreements before the Commission has had an opportunity to rule thereon in an adversary proceeding, but granted a preliminary injunction upon the condition that Isbrandtsen, within 20 days from the entry of the order, "file and thereafter diligently prosecute before the United States Maritime Commission a complaint challenging the validity" of the agreements involved. The operation of the particular parts of the agreements was suspended pending the filing of such complaint. The present complaint was filed February 1, 1949, and a prehearing conference was held subsequent to the filing of the answer.

United States Department of Justice, United States Department of Agriculture, and Himala International intervened in support of the complaint, and Pacific Coast Borax Company intervened generally.

At the hearing, complainant submitted copies of (1) the complaint in the District Court; (2) the agreements involved; (3) letters to shippers announcing promulgation of the contract systems; (4) the proposed forms of contract for the two trades; and (5) the proposed tariff schedules covering the contracts. Complainant thereupon rested its case. Upon denial of their motion to dismiss the complaint, respondents went forward with their case.

Contentions of the parties. (a) Complainant: The complaint alleges that the approval by the Commission of the agreements under attack exceeded its authority under section 15 of the Act; that the approval contravenes that part of section 14 of the Act which prohibits retaliations or discriminations against a shipper for patronizing any other [fol. 355] carrier; that under Article 1, section 1, and Article 1, section 8, paragraph 18, of the Constitution, no legislative authority is or can be delegated to the Commission to authorize the conference, by the use of the contract system, to exclude complainant from engaging in trade or commerce; and that such approval would deprive complainant of its property without due process of law under the Fifth Amendment to the Constitution.

(b) Department of Justice: In supporting complainant's case, intervener Department of Justice does not maintain that respondents have violated the Sherman or allied anti-trust acts, nor does it in any way challenge the conference system as such, or the immunity enjoyed under agreements validly authorized and approved by the Commission. It does urge, however, that section 14 of the Act contains an anti-trust policy which is at odds with the contract system, and that the Commission has no authority to approve the contract system. In its brief the Department argues that the contract system results in discrimination and retaliation against shippers within section 14(3) of the Act.

(c) Department of Agriculture: In its brief intervener Department of Agriculture contends that the contract system operates to the disadvantage of shippers of agricultural commodities and is opposed by them; that the system is not necessary to achieve rate stability; and that the system is unlawful under section 16 as well as under section 14 of the Act.

(d) Himala International: In addition to the allegation that the proposed contract rates are unduly discriminatory in that the shipper gets the same service irrespective of whether he signs a contract, intervener Himala International contends in its brief that there is no consideration for the contract; that the contract is so broad that the shipper is compelled to ship via conference vessels against the instructions and the best interest of his principal, the buyer, and that the penalty for so doing is an unjust and unreasonable charge in violation of sections 14(3), 16(1), and 17 of the Act; that the contract is one-sided; that the penalty clause of the contract is unduly discriminatory and retaliatory; that the contract is ambiguous; that the port clause of the contract is unduly discriminatory; that the granting of contract rates to the Government on commercial shipments without requiring the Government to [fol. 356] sign contracts is unduly discriminatory; and that the Canadian conference contract is illegal because American shippers are subject to penalty if they ship via non-confidence carriers from a Canadian port.

(e) Respondents: Respondents contend that the contract system does not require prior approval by the Commis-

sion under section 15 of the Act; that the validity of the system in our foreign trade is firmly established; that the facts of record warrant the use of the system; and that the contract forms themselves are valid.

The contracts. Section 3 of Agreement No. 4490, as amended,[3] states that North Atlantic Continental Freight Conference "may provide specific contract and non-contract rates in an effort to stabilize rates and permit of forward trading for the common good of the Members and Exporters." The organic agreement of the Continental North Atlantic Westbound Freight Conference (No. 7000) [4] contains no similar provisions, but Agreement No. 7920, as amended, between the lines of that conference and those of the French North Atlantic Westbound Freight Conference, declares that contract rates shall be assessed if established.

The contract system has been in effect in the two trades under consideration for about 25 years. Prior to World War II there were two contracts eastbound, one for shipments to Belgium and Holland and one for those to Germany. During that period, over 700 of the approximately 1800 items in the eastbound tariff were covered by contract, and these represented substantially all the commodities moving in volume. The contract system was abandoned upon the advent of war, and although it was testified that it was the desire of the conferences to reinstate the system when vessels were returned to private operation [fol. 357] upon the termination of the United Maritime Authority on March 2, 1946, action was not taken until the Fall of 1948.

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[3] Covers transportation of property from U. S. North Atlantic ports (Portland, Me. Hampton Roads range) to ports in Belgium, Holland, and Germany (excluding German Baltic).

[4] Covers transportation of property from or via ports of Germany, Belgium, and the Netherlands (range between Hamburg and boundary line of Belgium and France) to U. S. North Atlantic ports (Hampton Roads/Portland range), exclusive of property within the scope of the Swiss/North Atlantic Freight Conference.

On October 1, 1948, the east bound conference sent to about 4500 shippers on a pre-war list a letter enclosing a contract for the period between November 1, 1948, and December 31, 1949. About 3000 of them were returned duly signed. Of the approximately 2200 items in the tariff, there are 528 principal commodities moving; nine commodities, which seldom move, were specifically exempted from contract. The tariff indicates that the contract rates were to be the then current rates and that the non-contract rates were to be substantially 20 percent higher than the contract rates.

Although there is no letter of record from the westbound conference to its shippers, there is a form of letter to shippers from the agents of Black Diamond Lines, one of the members of the westbound conference, dated September 28, 1948, informing them of the intention of the conference to revive the contract system effective November 1, 1948, "almost in the same shape as same was existing before the last world war." It was also stated that contract forms would gradually be forwarded by the secretary of the conference, and that "it is the intention in the near future to apply the tariff freights now in force as contract freights and to fix tariff freights (non-contract rates), which will be abt. 20% higher." The reason for the proposal was given as follows: "Up to the present uniform tariffs were applied for all shipments, irrespective of the fact whether shippers exclusively shipped all their parcels by Conference Lines, or that they only made use of the Conference lines if this was convenient to them and also of the sailings of the so-called outsiders. In this was an injustice, which will be removed by the re-establishment of the Contract system. Moreover the Contract system will still further stimulate the stability of the Conference, by which according to our opinion the trade in general will be served."

The eastbound contract provides that the shipper ("Merchant") shall ship by the conference lines "all shipments of the commodities mentioned (or provided) below"; that "failure so to tender any such shipments to the Carriers or shipment of them by vessels other than those of the Carriers shall be a violation of this contract"; that the car-

riers agree to transport the shipments on their vessels; that [fol. 358] if the carriers fail to name space within three days after the shipper applies therefor, the shipper shall be free to secure space elsewhere without prejudice to the contract, but the shipper must first give the conference an opportunity to arrange space; that the carriers agree to furnish "space in such vessels as they may respectively load"; that if the shipper shall make shipment in violation of the contract the carriers "shall have the option at any time to declare this agreement terminated, and the Merchant shall be liable to the carriers for liquidated damages equal to twice the amount of freight that would have been payable under this contract in respect of the shipments constituting the violation"; that "other commodities as may be shipped by the Merchant from time to time, which shall be deemed covered by this agreement", shall be at the lowest rates then in effect for the particular commodity; that rates are subject to reasonable increase from time to time, and that the notice thereof shall be deemed accepted by the shipper unless, within 20 days after his receipt of the notice, he gives the carriers written notice of non-acceptance, in which case the carriers shall have the option at any time within 20 days after receipt of the shipper's notice to cancel the agreement on giving the shipper at least 60 days written notice; that the carriers shall have the option to reduce their rates, the shippers in such case to receive the benefit thereof; and that the agreement shall continue in effect throughout consecutive subsequent years subject to the right of either the shipper or the carriers to terminate it as of December 31 in any year by giving the other party 90 days written notice of termination.

The eastbound conference has a cooperative rate agreement with lines operating out of Canada to common destinations, which agreement has been approved by the Commission under Section 15 of the Act. The eastbound contract includes the names of the Canadian lines as well as those of the lines serving only U. S. North Atlantic ports, and the conference chairman signs the contract on behalf of both sets of lines.

Similar in format, the westbound contract nevertheless differs in several material respects from the eastbound

form: in case of violation of the contract the conference secretary gives written notice to the shipper that he has [fol. 359] "rendered himself ineligible for contract terms", in which case the non-contract rates shall be applied to all shipments made subsequent to the date of notice, and the carriers may "claim for losses suffered by such violation"; the carriers do not have the right to increase rates during the contract period; no permission is given to the shipper to ship via non-conference lines in case the conference lines cannot furnish space; and the contract continues in effect for subsequent periods of six months only, subject to the right of either party to terminate it as of June 30 or December 31 in any year by giving the other party 90 days written notice of termination.

The hearing centered around the eastbound contract, the only evidence as to the west bound contract being the form itself.

Evidence against the contract system. Complainant is an American company incorporated in New York in 1941,[5] and owns eight vessels, all American, although it charters some foreign tonnage. A predecessor company, Isbrandtsen-Moller Co., Inc., a New York corporation with American officers and two American and one Danish directors, operated between 1921 and 1941. Neither company has been a member of any conference, although A. P. Moller, for whom Isbrandtsen-Moller acted as agent in the Far East trade, was a member of the homeward conference from China, and was described by complainant's president as "conference minded." Isbrandtsen-Moller chartered vessels, mostly Norwegian; it was testified that no American vessels were available during that period. Complainant's business is now 1/3 freight and 2/3 tramp, the theory of its operation being basically tramp.

Complainant made it quite clear that it had no quarrel with the conference system as such; indeed, it admitted that conferences have advantages if properly run. Furthermore, complainant realizes that it may join the present

[5] The president testified that the company was incorporated in 1938, but the Information Circular filed by the company with the Commission gives the year of incorporation as 1941.

conferences and enjoy the attendant privileges of the contract system, but it does not wish to do so. The inability to have access to American shippers appears to be complainant's chief concern, the overall objection being to any [fol. 360] arrangement whereby foreign lines can get business from American shippers but American lines cannot. There is no objection to conferences fixing rates, or even to the method used, but complainant does not want conferences to have the power to control the traffic. The dissatisfaction is with the means used rather than with the results obtained. By virtue of a group contract which permits the lines to exercise a great deal of power over and to bring pressure to bear upon the majority of shippers, it is felt that the contract system very materially narrows the field in which complainant might expect to do business. On the other hand, there is no objection to contracts such as used by complainant's predecessor at one time, and hereafter more fully described. Any organization whose activities are exempted from the provisions of the anti-trust laws, such as conferences whose agreements have been approved by the Commission pursuant to section 15 of the Act, should not, in complainant's opinion, be allowed a monopoly on American trade rights.[6] It would make no difference to complainant if all the members of the conferences were American lines, for the system itself acts as a boycott against the independent carrier.

Based upon contact with shippers over the years, complainant is convinced that most of them are opposed to the contract system but are forced to accept it through economic coercion; furthermore, shippers generally feel that they should be free to use the vessels that best suit their convenience, but as it often happens that complainant's service is not sufficient for their needs, they must agree to give all their shipments to the conference lines in order to secure the lower rates even though they would like to patronize both complainant and the conference lines. Since the contract takes away the shipper's freedom of choice, the situation resolves itself, according to complainant,

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[6] Section 15 provides that "every agreement" and not the parties thereto are excepted from the anti-trust laws.

into a question of public policy as against shipper wishes. [fol. 361] In exploring the various ramifications of the contract system, complainant and interveners are unable to discover any difference between the service accorded the shipper who signs and the shipper who does not sign a contract. Nor, it is urged, does the contract contain reciprocal obligations, the conference lines not being compelled to furnish any particular amount of service and there being no obligation to carry the goods offered.

Complainant states that rates play such an important function in international commerce that on a vast amount of material sold the competition is so keen that to predicate the price to the buyer on the non-contract rates would automatically eliminate the business. As the right to compete is the crux of complainant's position, it believes that the inability of independent carriers to do so deprives shippers of the benefits of lower rates, and that if rates were fixed on a genuine competitive basis the shipper would pay no more than was reasonable for the service. It is agreed, however, that cutthroat competition is not good for any segment of our foreign trade. Conference rates, according to complainant, generally represent the ceiling of cost of American operation, and therefore the level of conference rates in the present trades is unduly high. There is no objection to American carriers having rates that will enable them to stay in business. Since the cost of foreign-flag operation is lower, a rate level satisfactory to American lines should be even more satisfactory to the foreign lines, and to that extent the foreign lines enjoy a subsidy. It is contended that the American ceiling is an umbrella for foreign operators and not for complainant, and that if the conference rates are based on American costs and there are a number of foreign lines with lower costs, the foreign lines "have quite a bonanza." Under such a set up complainant thinks foreign vessels will gradually push American vessels to one side, and as cargo falls off the foreign lines can stay in the trade longer and may also increase their service. If a number of lines can agree to a rate schedule on a basis satisfactory to the American lines, complainant is of the opinion that the foreign lines have a decided advantage and may expand their service practically at will. Foreign lines are better off under the con-

ference set up now in operation and would be foolish, [fol. 362] complainant believes, to have their own conference as long as they can hold on to the contract system. It is thought that American lines could now hold their own in open competition without conferences.

If conferences are well run complainant believes that the weight of the membership would always be an influence to attract business without the use of the contract system, and that American lines are incurring a certain amount of ill will by using it. In complainant's opinion, the advent of the system was an important factor in decreasing American participation in the various trade routes, and it has not benefited the commerce of the United States or contributed to the development of the American merchant marine. Furthermore, it does not foster the American merchant marine to make it difficult for an American carrier to stay in the trade unless he chooses to accept the terms of a group of lines. Prior to 1935 American vessels were decreasing in number in competition with foreign vessels, and at the present time foreign lines are putting on additional vessels in our trade routes when American lines are not able to do so.

Complainant does not agree with the contention of the conferences that the contract system assures stability, especially since the contract itself does not provide for any stated stability of service. As an independent, complainant and its predecessor have provided a regular service in the present trades since 1931, with at least 2 sailings monthly during that period although calls were not made at Hamburg or Bremen in 1938 and 1939. The sailing schedules of the conference lines, as published in the New York Journal of Commerce after November 1, 1948, were stated by complainant to be the same as prior thereto, and the proposed resumption of the contract system added no stability as far as sailings are concerned, from which it is concluded by complainant that the conference lines do not provide any more stability of sailings than complainant does, and that the sailings of all lines in the trades since World War II have been as stable as could be desired by shippers generally. As further proof of the point, it was pointed out that of the 11 voting members [fol. 363] of the eastbound conference as of the time of

the hearing, only four have been members since 1938; that six members joined between March 1946 and April 1947; that three members have since withdrawn in order to enter a Canadian conference; and that carriers may enter or withdraw from the conference at will.

The Department of Agriculture maintains that the contract system will adversely affect the free movement of agricultural products and farm supplies in foreign commerce; a shipper of those commodities should be free to bargain with independent non-conference carriers to obtain the cheapest rate without being penalized when he fails to route all his tonnage via conference lines; the system monopolizes transportation facilities; if the contract rate is fair and equitable then the non-contract rate is discriminatory; and open competition among carriers would result in lower charges, and any downward trend would tend to have a favorable economic effect on agricultural products by increasing the quantities exported and contribute to a reduction of surpluses that may exist. Although the Department's witness could not say whether private shippers of agricultural commodities favor or oppose the system, he stated that the Department generally predicates its participation in regulatory proceedings in large measure upon the views obtained from time to time from agricultural producers and shipping interests throughout the country. The witness did not know whether the export commerce of the United States has been monopolized by conferences employing the contract system, nor did he know what proportion of agricultural exports are made by the Government itself. A large portion of Government business moves in full loads not subject to tariff rates, but even on smaller lots the Government pays the contract rates without signing a contract, in accordance with specific provisions of the tariff.

Evidence in favor of the contract system. Respondents point out that the contract system helps to prevent self destruction and provides protection from outside competition. Although there was no elaboration as to how the system would prevent self destruction, it is assumed that what is meant is that carriers, having bound themselves by contract, would hesitate to withdraw from the conference and [fol. 364] attempt to secure business by means of rate cutting. By charging the same rate it becomes more than

ever necessary for the individual members to offer superior service in order to secure business. The only shipper witness testified that he has given business to small conference lines because of their good service.

Prior to World War II there were more vessels than cargo to fill them, which made competition keen. As the contract system, in the opinion of respondents, is necessary only under normal conditions, the conferences felt that the system was desirable during that period. Immediately following the war there was more cargo than vessels to handle it. Because of his unfavorable position, respondents think the independent carrier must offer inducements to shippers in normal times, and the more the inducements the more unstable the trade becomes. In spite of that, however, respondents feel that the major interests are stabilized and that makes the rest of the trade fairly stable by natural reaction. Respondents admit that there is no such thing as absolute stability, but they believe that the contract system assures a greater degree of stability than any other system known; as such, it cannot be separated from the conference system. Respondents maintain that complainant's relatively stable rate structure could not have been accomplished without the existence of the conferences.

The former chairman of the eastbound conference, who was instrumental in drawing the original contract in that trade, testified that shippers generally favored the system; that the primary purpose of the conference is to see that traffic moves; that shippers get the benefit of any decreases in rates and are protected as to increases; that the crux of the situation is the mutual interest between shippers and carriers; that if, by reason of rates, shippers cannot ship, the carrier does not get the business; that the shipper is not necessarily interested in getting transportation at the lowest possible cost; that the shipper is interesed in doing as much business as possible, which the lines applaud; and that as business is the carriers' life blood, the carriers are therefore opposed to monopoly. The witness concluded that stability benefits all; that there will be as much cargo as possible generated under the contract system; that the [fol. 365] carriers will operate the right number of vessels to handle that cargo; that there will be reasonable com-

petition; that shippers will get a better service; and that there will be stability if there is no rate cutting.

In the opinion of the directors of the National Council of American Importers, whose members have largely accepted the contract system, it is extremely important that the small shipper be protected in his transportation costs, particularly in the raw materials trades, where a great deal of business is done on a gross profit of from one to three percent, and there is no better system calculated to preserve the rights of the small merchant because cut-throat competition tends to favor the large shipper. From the carrier's view point, adequacy of service cannot be obtained when there is uncontrolled competition, and no one wins in the long run. The former chairman of the eastbound conference testified that conferences are reluctant to change contract rates. If there were no contracts there would be a free-for-all, shippers would not know what was going to happen, and complainant would not enjoy the conference umbrella, which gives him flexibility. He further stated that rate cutting attracts some shipper traffic managers but they disturb the market because the rates go unreasonably low but eventually go up and prices have been lowered in the meantime, which makes it hard for the merchants to adjust their prices. The chairman of the National Council of American Importers is of the opinion that the contract system furnishes uniform rates, prevents cut-throat competition, and results in regular scheduled sailings, good vessels, proper terminal facilities, and proper handling of cargo.

The opportunity for forward trading is one of the most important benefits which respondents say accrue to the shipper under the contract system. Once the rate is agreed upon the shipper has a sense of security so that he can go ahead with his sales. There may be shippers who do not demand frequency of service, and these may patronize the independent line; but because the independent has to offer inducements, this renders the necessity for stability, on the part of the shipper, more acute, and he is therefore willing to pay a higher rate for the assurance [fol. 366] of being able to do forward trading. In the early 1930's the rate was protected for the duration of

the contract, but this was changed to take care of increases resulting from dollar devaluation and other causes. Although the proposed eastbound contract protects the shipper for about 82 days, the conference, for adequate reasons, will give him a forward trading period of six months. Respondents' sole shipper witness admitted, however, that he would like a longer period.

Respondents made much of the fact that complainant itself has used contracts with shippers. Prior to World War II complainant's predecessor used several types of contracts, although it was testified that only 25 or 30 contracts actually were made. The earliest agreements simply gave lower rates to enable shippers to compete in foreign markets, and the shipper was expected, as a matter of courtesy, to route all his shipments via Isbrandtsen-Moller. Under another form of contract, the shipper agreed to ship all his merchandise via Isbrandtsen-Moller at certain rates, and in case competing lines reduced their rates below the agreed rates, Isbrandtsen-Moller would either meet such rates or release the shipper from the contract. Finally, effective January 2, 1937, and continuing until August 31, 1939, Isbrandtsen-Moller published 176 contract/non-contract rates in the North Atlantic/Antwerp-Rotterdam-Amsterdam trade, and these, together with a form of contract, were filed with this Commission. Under this contract the shipper agreed to offer all his shipments for a given period and the carrier agreed to protect the particular rates; any shipments which, on account of delivery requirements, could not be held and sent by the next vessel, would not be counted a breach of the agreement if sent via other lines, provided Isbrandtsen-Moller was notified and the prevailing rates of the other lines were paid. No contracts have been used by complainant itself, particularly because there have been no conference contracts since the war, and complainant's president testified that his company does not intend to use them in the future.

Exhibits of record indicate that the general pattern or rate basis used by complainant from November 6, 1939, to April 30, 1940, was conference rates less 10 percent. Effective August 1, 1946, complainant in effect adopted all [fol. 367] the conference rates and classifications in the eastbound tariff, copying them word for word, including

certain typographical errors. This tariff contains 581 commodities on which complainant's rates are from 3.3 percent to 53.4 percent lower than the conference rates.

Conclusions

As hereinbefore stated, it is urged that the contract system, by compelling non-signers of contracts, or signers who have breached their contracts, to pay the higher non-contract rates, violates section 14 of the Act, subsection (3) of which provides that no carrier shall—

> "Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason."

The pertinent parts of the foregoing section are the retaliation against a shipper or the resort to other discriminating methods because the shipper has patronized another carrier.

The non-contract rate is paid by every shipper not signing a contract, regardless of whether he patronizes another carrier, and any shipper may sign a contract irrespective of whether he has patronized complainant or any other independent carrier. The non-contract rate, when paid by the non-signer of a contract, is the return to the carrier for services performed, whereas the contract rate is a dividend to the shipper flowing from the contract. The non-contract rate which is paid by a shipper who has breached his contract is simply a penalty which any person must expect to pay when he violates his contractual obligations. It seems clear that the contract system is not a retaliation against shippers for patronizing other carriers.

Emphasis is laid by complainant and interveners upon the argument that the service rendered by respondents to contract signers is no different from that enjoyed by those who do not sign contracts, and that such discrimination completely destroys any legal justification for the contract system. In that connection, it is argued that the word

"discriminating", as used in section 14 (3) of the Act, is not qualified by such words as "unduly", "unjustly", or [fol. 368] "unreasonably", as found in sections 16 and 17, and that the three sections therefore cannot be viewed in the same light. A similar argument was interposed in *American Express Co.* v. *United States*, 212 U. S. 522, where the court had for interpretation section 1 of the Elkins Act (49 U. S. C., sec. 41), which makes it unlawful "to offer, grant, or give, or to solicit, accept, or receive any rebate, concession or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier" subject to the Interstate Commerce Act, as amended. The Supreme Court said (page 531) that the purpose of that portion of the law just quoted was "to prevent and punish rebating, preferences and all acts of *undue* distrimination" (underscoring supplied). See, also, the opinion of the lower court, 161 Fed. 606, 610. The same reservation should be placed on the word "discriminating" in section 14 (3) of the Shipping Act, 1916.

Complainant and interveners cite various cases—court and administrative—as support for their contention that the contract system is unlawful *per se* under section 14 of the Act:

(1) *Menacho* v. *Ward*, 27 Fed. 529. The Circuit Court for the Southern District of New York held, in 1886, that it was against the common law for common carriers by water operating between New York and Cuba to charge higher rates to shippers who refused to patronize them exclusively. This case was appropriately distinguished later (1894) by the New York Court of Appeals in *Lough* v. *Outerbridge*, 143 N. Y. 271, 38 N. E. 292, where it was held that the contract system itself was not contrary to the common law. The court said (38 N. E. 295):

> "The authorities cited seem to me to remove all doubt as to the right of a carrier, by special agreement, to give reduced rates to customers who stipulate to give them all their business, and to refuse these rates to others who are not able or willing to so stipulate, providing, always, that the charge exacted from such parties for the service is not excessive or unrea-

sonable. The principal of equality to all, so earnestly contended for by the learned counsel, for the plaintiffs, was not, therefore, violated by the defendants, since they were willing and offered to carry the plaintiffs' goods at the reduced rate, upon the same terms and conditions that these rates were granted to others; and, if the plaintiffs were unable to get the benefit of such rate, it was because, for some reason, they were unable or unwilling to comply with the conditions upon which it was given to their neighbors, and not because the carrier disregarded his duties or obligations to [fol. 369] the public. The case of Menacho v. Ward, 27 Fed. 529, does not apply, because the facts were radically different. That action was to restrain the carrier from exacting unreasonable charges habitually for services, the charges having been advanced as to the parties complaining, for the reason that they had at times employed another line. It decided nothing contrary to the general views here stated. On the contrary, the court expressly recognized the general rule of the common law with respect to the obligations and duties of the carrier substantially as it is herein expressed * * *."

It should be noted at this point that the present record contains only general statements as to the reasonableness of respondents' proposed rates, and there is no evidence that the non-contract rates are too high.

(2) *Swayne & Hoyt, Ltd.* v. *U. S.*, 300 U. S. 297. The Supreme Court sustained the order of the Secretary of Commerce (the Commission's predecessor) which directed water carriers in the intercoastal trade to cancel their contract rates as unduly prejudicial. The proceeding was founded upon section 16 and not section 14 of the Act, and the court recognized that it was within the discretion of the Secretary of Commerce to make such finding provided his decision was based on substantial evidence. The decision did not declare the contract system unlawful *per se*.

(3) *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400. In discussing this case, which was a general investigation by the Commission's predecessor into the various practices of carriers engaged in the intercoastal trade, com-

plainant and interveners quote rather extensively from the condemnatory portions of the decision of the Secretary of Commerce on the contract system. They failed, however, to quote the following sentence directly connected therewith (page 456):

> "However nothing in those acts has deprived the carriers of the right to contract, and subject to the prohibitions mentioned they are free to make special contracts looking to a legitimate increase of their business."

(4) *Eden Mining Co.* v. *Bluefields Fruit & S. S. Co.*, 1 U. S. S. B. 41. The United States Shipping Board, the Commission's predecessor, declared unlawful a contract between the carrier and its shippers. The case rests upon its particular facts, however, as appears from the following quotation from the decision of the Board in the later case of *Rawleigh* v. *Stoomvaart et al.*, 1. U. S. S. B. 285, [fol. 370] 290, upholding the contract system there involved:

> "As there disclosed (the *Eden* case), however, a single carrier sought by contracts with shippers to monopolize the trade by preventing use of the vessels of any other carrier over a period of 3 years. Shippers were permitted no choice of carriers, and participation by other regular carriers in the contracts was neither provided for nor contemplated."

Other differences were also pointed out by the Board. It should be noted, too, that the *Eden* case involved sections 16 and 17 and not section 14 of the Act.

(5) *Contract Routing Restrictions*, 2 U. S. M. C. 220. The Commission did not condemn the contract system in this case but merely required the conferences to modify their contracts by eliminating therefrom the requirement that inland shippers must route their cargo through Gulf or Atlantic ports via conference vessels instead of directly out of the Great Lakes via non-conference vessels. In their briefs, complainant and the Department of Justice make use of certain general remarks of the Commission in the *Contract Routing Restrictions* case, but again the sentence

immediately following the quotation, reading as follows, was omitted: "The issue here is whether such discrimination is undue or unreasonable."

Neither complainant nor interveners referred to the most recent proceeding involving the contract system—*Pacific Coast European Conference*, 3 U. S. M. C. 11—although the Department of Justice was one of the most active participants therein. Suffice it to say that in that case the Commission stated that it could find no authority that the contract system is unlawful *per se*.

There can be little doubt that the contract system in the present trades, if allowed to become effective, would create a virtual monopoly, but monopolies *per se* are not outlawed by the Act, as will appear from a reading of section 15, for example, which legalizes, among other things, any agreement among carriers, when approved by the Commission, which controls, regulates, prevents, or destroys competition. On page 298 of H. R. Doc. 805, 63rd Congress, 2nd session, it was stated that "the conference system largely results in placing rates outside the influence of competition." This observation was made by the so-[fol. 371] called Alexander Committee which conducted extensive hearings for several years into the practices of ocean carriers, and whose report, so frequently referred to, formed the basis of the Act. The committee also made the following statement (page 416):

> "To terminate existing agreements would necessarily bring about one of two results: the lines would either engage in rate wars which would mean the elimination of the weak and the survival of the strong, or, to avoid a costly struggle, they would consolidate through common ownership. Neither result can be prevented by legislation, and either would mean a monopoly fully as effective, and it is believed more so, than can exist by virtue of an agreement."

See also *United States* v. *Hamburg-American S. S. Line*, 216 Fed. 971, reversed as moot, 239 U. S. 466.

There is general agreement among the parties that deferred rebates and fighting ships were among the practices considered by the Alexander Committee, and that these were

specifically banned by section 14 of the Act in accordance with the recommendations of the committee. Complainant maintains, however, that the contract system of the type now under attack was unknown to the committee. The following extract from the committee report is helpful (page 290):

> "(a) Joint contracts made by the conference as a whole.—Such contracts are made for the account of all lines in the agreement, each carrying its proportion of the contract freight as tendered from time to time. The contracting lines agree to furnish steamers at regular intervals and the shipper agrees to confine all shipments to conference steamers, and to announce the quantity of cargo to be shipped in ample time to allow for the proper supply of tonnage. The rates on such contracts are less than those specified in the regular tariff, but the lines generally pursue a policy of giving the small shipper the same contract rates as the large shippers, i.e. are willing at all times to contract with all shippers on the same terms."

Although it is true that the present contracts are not the same in all respects as those considered by the committee, nevertheless the controversial provision as to lower rates for those who sign the contract was certainly a factor.

In *Swayne & Hoyt, Ltd.* v. *U. S.*, *supra*, the court said (page 307, note 3):

> "The Committee recognized that the exclusive contract system does not necessarily tie up the shipper as completely as 'deferred rebates', since it does not place him in 'continual dependence' on the carrier by forcing his exclusive patronage for one contract period [fol. 372] under threats of forfeit of differentials accumulated during a previous contract period. Accordingly the Committee did not condemn the contract system completely."

The matter was again commented on by the court in the opinion directing the filing of the present complaint—

Isbrandtsen Co., Inc. v. *U. S.*, 81 F. Supp. 544—where it was stated (page 546):

> "Very considerable doubt upon such holding (that the system is unlawful) is thrown by Swayne & Hoyt, Ltd., v. U. S., 1937, 300 U. S. 297, 306, 307 and note 3, 57 S. Ct. 478, 81 L. Ed. 659, and by the legislative history of the statute, H. R. Doc. No. 805, 63rd Cong., 2nd Sess., 1914, 287-292)."

As germane to the point, the Eastman bill (S. 1632, 74th Congress, 1st session), the purpose of which was to transfer regulatory power over all water carriers to the Interstate Commerce Commission, incorporated verbatim sections 14 and 15 of the Shipping Act, 1916, although opposition to the contract system had been presented to the committee on behalf of Isbrandtsen-Moller, complainant's predecessor.

From the foregoing it is clear that the contract system is not unlawful *per se*, and that it is within the administrative discretion of the Commission, when supported by substantial evidence, to determine in each case whether the system violates one or more sections of the Act.

In the court proceeding initiated by complainant on October 28, 1948, it appears that the sole issue involved, in so far as the Shipping Act, 1916, is concerned, was the lawfulness *per se* of the contract system under section 14. This persists in the present proceeding, as evidenced by complainant's motion to expedite, the complaint, statements made by complainant's counsel at the prehearing conference, statements made by counsel throughout the hearing itself, and the briefs of complainant and the Department of Justice. The Department of Agriculture, in its petition to intervene herein, stated that there was no intention "to broaden unduly the scope of the present proceeding in any respect whatever." A fair interpretation of the petition of intervention filed herein by Himala International justifies the conclusion that Himala questions only the *per se legality of the contract system*. Under the circumstances, therefore, no finding will be made (1) as [fol. 373] whether the facts are sufficient to justify the use of the contract systems in the present trades, or (2) as to the lawfulness of the contracts themselves or to

their scope and application. These are all matters which must be decided in separate appropriate proceedings before the Commission.

Since it is not within the Commission's province to pass upon the constitutionality of the Shipping Act, 1916, no finding will be made as to complainant's contention that under the Constitution the Commission has no power to approve the contract system. *Telephone and Railroad Depreciation Charges*, 118 I. C. C. 295, 326. Furthermore, the narrow question in issue precludes the necessity of determining whether, as contended by respondents, the contract system need not be approved by the Commission, prior to its effectiveness, under section 15 of the Act.

The examiner believes it his duty, however, to point out to the Commission certain possible violations of law, developed or enlarged upon at the hearing, which the Commission, on its own initiative, may see fit to investigate: (1) at the request of the Automobile Manufacturers Association, the effective date of the contract period in the eastbound trade was postponed for the Association's members from November 1 to December 31, 1948, and the members were to get the lower contract rates during that period even though they had not signed contracts, a possible unwarranted discrimination against all other shippers; (2) the eastbound contract gives the conference the option rather than making it mandatory to terminate the contract in case of breach, thereby making it possible to favor certain shippers; (3) the eastbound contract provides, in case of breach, for liquidated damages equal to twice the amount of the freight payable on the particular shipments, which may be a penalty rather than damages; and (4) the Government is granted contract rates on competitive commercial shipments without signing contracts, which possibly results in unlawful discrimination.

Recommendations

The Commission should find that the contract systems in the trades here involved are not in violation of section 14 (3) of the Shipping Act, 1916, and the complaint should be dismissed.

[fol. 374] BEFORE THE UNITED STATES MARITIME COMMISSION

[Title omitted]

ORDER REMANDING RECORD TO EXAMINER—December 19, 1949

The above-mentioned proceeding having come before the Commission in this date upon argument in support of, and upon exceptions as to the recommended decision of Examiner C. W. Robinson, and due deliberation having been had, it is

Ordered that the record herein be, and it is hereby remanded to said examiner with instructions to prepare, serve, and file proposed findings of fact supplemental to his aforesaid recommended decision, as to whether the exclusive patronage contract system proposed to be instituted by respondents, and the forms of exclusive contracts to be employed in connection therewith, (1) are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or (2) operate to the detriment of the commerce of the United States, or (3) are in violation of the provisions (except section 14 Third) of the Shipping Act, 1916; and it is further

Ordered that exceptions to, or memoranda in support of the aforesaid supplemental findings may be filed within 15 days after service thereof, but oral argument shall not be heard thereon.

By the Commission.

A. J. Williams, Secretary. (Seal)

[fol. 375] BEFORE THE UNITED STATES MARITIME COMMISSION

[Title omitted]

MOTION OF ISBRANDTSEN COMPANY, INC. TO AMEND COMMISSION'S ORDER OF REMAND—December 30, 1949

I. By Order dated December 19, 1949, the Commission remanded the record in the above-entitled proceeding to the Examiner with instructions "to prepare, serve, and file

Proposed Findings of Fact supplemental to his aforesaid Recommended Decision." The Order of Remand directed the Examiner to make findings with respect to whether the exclusive patronage contract system involved in this proceeding violated various sections of the Shipping Act of 1916 other than Section 14 (3) of said Act. In specifically excluding Section 14 (3) of the Act from the further consideration of the Examiner, the Commission apparently assumed that the Examiner in his Initial Recommended Decision had completely disposed of all questions arising under that Section. Even a cursory reading of the Examiner's Initial Recommended Decision, however, will disclose that the Examiner confined his initial consideration of Section 14 (3) of the Act exclusively to a consideration of whether or not the exclusive patronage contract system was *unduly* discriminatory under that Section. In so doing, the Examiner failed completely to pass on the question whether the exclusive patronage contract system was *discriminatory* or retaliatory. It follows, therefore, that in failing to pass on the question whether the exclusive patronage contract system was *discriminatory* or retaliatory under Section 14 (3), the Examiner failed to pass on the prime issues tendered by complainant. In the event, therefore, that the Commission or a court [fol. 376] should subsequently reverse the Examiner's construction of Section 14 (3), the record would fail to contain a finding with regard to the principle contentions advanced by the complainant herein, a defect that might well compel a further remand at a later stage in the proceeding with all of the unnecessary delays attendant upon such a course.

II. In his Initial Recommended Decision, the Examiner failed to make any specific Findings of Fact or Conclusions of Law, designated as such, with respect to the threatened institution of the exclusive patronage contract system in these trades. Indeed, his Recommended Decision does not even contain a Finding of Fact, denominated as such, that the respondents ever threatened to institute any particular exclusive patronage contract in this or any other trade. In failing to make such findings, the Examiner ignored the 25 Proposed Findings of Fact and the 3 Conclusions of Law, tendered by the complainant, in compliance with Rule

201.191 of the Commission's Rules of Procedure, which requires, among other provisions, "In addition to the ordinary summary of evidence and statements of law, with appropriate citations of the transcript, and authorities relied upon, the brief shall contain Proposed Findings of Fact and Conclusions in serially numbered paragraphs." Our Brief to the Examiner complied with this Rule and contained such Proposed Findings of Fact and Conclusions of Law, a detailed discussion, and references to, 1,400 pages of evidence taken before the Examiner. In this connection we earnestly request that the Members of this Commission will read our Brief, submitted to the Examiner, as well as our Exceptions and Brief in support of them.

By failing to pass upon the proposed findings and conclusions submitted by the complainant, a copy of which was attached to the Exceptions filed before this Commission, the Examiner would appear to have ignored both the letter and the spirit of Section 8 (b) of the Administrative Procedure Act (5 U. S. C. 1007) which provides:

> (b) Submittals and Decisions.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such find-[fol. 377] ing, conclusion, or exception presented.

Failure to "rule upon" such 25 Findings of Fact and 3 Conclusions of Law denies to any reviewing body, commission or court, adequate opportunity to determine the basis for any conclusions arrived at by the Examiner, and might well entail a further remand at a subsequent stage in the proceedings for the ascertainment of detailed findings and conclusions on which to predicate a final decision.

III. In its Order of Remand of December 19, 1949, the Commission ordered that oral argument should not be permitted upon such supplemental findings as the Examiner

should file in compliance with the Commission's Order. Such advanced denial of oral argument on such findings would appear to represent a prejudgment by the Commission as to the necessity of argument on findings not yet made or filed with the Commission. In view of the presently unknown character of the findings to be filed by the Examiner pursuant to the Order of the Commission, such prejudgment of the necessity of oral argument upon such findings would appear to be indiscreet because the necessity for such oral argument can only be appropriately determined by the Commission upon the filing of the required findings by the Examiner.

Wherefore, to insure the completeness of the record herein, complainant respectfully moves the Commission to amend its Order of Remand of December 19, 1949, in the following respects:

1. Instruct the Examiner to prepare, service and file Findings of Fact and Conclusions of Law, supplemental to his aforesaid Recommended Decision, as to whether the exclusive patronage contract system proposed to be instituted by the respondents, and the forms of exclusive contracts to be employed in connection therewith, are discriminatory or retaliatory;

2. Instruct the Examiner to rule upon each of the 25 Proposed Findings of Fact and 3 Conclusions of Law, submitted by the complainant and include in his supplemental decision the ruling upon each such finding and conclusion; [fols. 378-379] 3. That the Commission reserve decision on oral argument upon any supplemental findings and conclusions, filed by the Examiner, by striking so much of its Order of December 19, 1949, as undertook to foreclose such oral argument.

Respectfully submitted, John J. O'Connor, 423 Washington Building, Washington 5, D. C., William L. McGovern, 1707 H Street, Northwest, Washington 6, D. C., Attorneys for Isbrandtsen Company, Inc.

Dated: Washington, D. C., December 30, 1949.

Certificate of Service (omitted in printing).

[fol. 380] BEFORE THE UNITED STATES MARITIME COMMISSION

[Title omitted]

ORDER MODIFYING ORDER OF REMAND—January 13, 1950

The Complainant having filed a motion dated December 30, 1949, to amend the Commission's Order of December 19, 1949, remanding the record herein to the examiner, and the Respondents having replied to said motion, and due deliberation having been had, it is

Ordered that the Commission's Order of December 19, 1940, is hereby modified and supplemented to read as hereinafter set forth:

"Ordered that the record herein be and it is hereby remanded to Examiner C. W. Robinson

A. With instructions to prepare, serve, and file proposed findings of fact supplemental to his recommended decision served October 5, 1949, as to whether the exclusive patronage contract system proposed to be instituted by respondents, and the forms of exclusive contracts to be employed therewith, (1) are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or (2) operate to the detriment of the commerce of the United States, or (3) are in violation of the provisions of the Shipping Act, 1916, and particularly whether they constitute a resort to other discriminative or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason:

B. With instructions to rule upon the proposed findings of fact and conclusions of law submitted by the Complainant; and it is further

"Ordered that exceptions to, or memoranda in support of the aforesaid supplemental findings may be filed within 15 days after service thereof."

By the Commission.

/s/ A. J. Williams, Secretary. (Seal).

[fol. 381] BEFORE UNITED STATES MARITIME COMMISSION

[Title omitted]

The proposed exclusive patronage contract/non-contract rate system of North Atlantic Continental Freight Conference and of Continental North Atlantic Westbound Freight Conference should be found not to be in violation of the Shipping Act, 1916, or in contravention of section 15 thereof.

Certain provisions of the proposed contracts to be used in connection with respondents' contract/non-contract rate system should be found to be in violation of the Act.

The complaint should be dismissed.

Additional appearances: *E. A. McDonald, Jr.*, and *T. R. Stetson* for Pacific Coast Borax Co., intervener.

RECOMMENDED SUPPLEMENTAL DECISION OF C. W. ROBINSON, EXAMINER

This proceeding involves the lawfulness of the exclusive patronage contract/non-contract rate system[2] (hereinafter referred to as the contract system or the system) as proposed by North Atlantic Continental Freight Conferance and by Continental North Atlantic Westbound Freight Conference in the transportation of cargo between U. S. North Atlantic ports and ports in Belgium, Holland, and Germany (U. S. M. C. Agreements Nos. 4490 and 7920). The findings in the examiner's recommended decision which was served on October 5, 1949, were limited to the lawfulness, *per se*, of the system under section 14(3) of the Shipping Act, 1916, hereinafter referred to as the Act, and it was concluded that "the contract system is not unlawful *per se*, and that it is within the administrative discretion of the Commission, when supported by substantial evidence, to determine in each case whether the system violates one or more sections of the Act."

[fol. 382] On December 19, 1949, following oral argument on the exceptions filed to the recommended decision, the

[2] The shipper agrees to route all his shipments via conference vessels, in return for which he receives lower rates.

Commission entered an order remanding the case to the examiner for further findings of fact. Upon the petition of complainant, the scope of the remand was enlarged by the following supplemental order of the Commission dated January 13, 1950, which is complete and in effect supersedes the order of December 19, 1949:

> "Ordered that the record herein be and it is hereby remanded to Examiner C. W. Robinson
>
> A. With instructions to prepare, serve, and file proposed findings of fact supplemental to his recommended decision served October 5, 1949, as to whether the exclusive patronage contract system proposed to be instituted by respondents, and the forms of exclusive contracts to be employed therewith, (1) are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or (2) operate to the detriment of the commerce of the United States, or (3) are in violation of the provisions of the Shipping Act, 1916, and particularly whether they constitute a resort to other discriminative or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason:
>
> B. With instructions to rule upon the proposed findings of fact and conclusions of law submitted by the Complainant * * *."

The present decision is filed in accordance with the foregoing mandate. To avoid undue repetition, this decision must be read in connection with the first recommended decision, where the facts are set out at greater length. Cross references will be made where appropriate.

The four pertinent sections of the Act are here quoted for convenience. Section 14 (3) provides that no carrier shall—

> "Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any

other carrier or has filed a complaint charging unfair treatment, or for any other reason."

Section 15 provides in part as follows:

"The board [Commission] may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act * * *."

[fol. 383] Section 16 provides in part as follows:

"That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 17 provides in part as follows:

"That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors."

The contract system. Complainant's position, detailed on pages 7-11 of the first recommended decision, may be summarized as follows: (1) it does not have access to American shippers because of the contract restrictions, which give the conference lines the power to control the traffic; (2) most shippers are opposed to the system but are forced to accept it through economic coercion; (3) shippers

feel they should be free to use those vessels that best suit their convenience; (4) there is no difference between the service accorded the shipper who signs and the shipper who does not sign a contract; (5) the higher non-contract rates eliminate a large part of our commerce because of keen foreign competition; (6) inability of the independent lines to compete results in the shipper not receiving the benefit of lower rates; (7) the system has decreased American participation in the various trade routes and therefore has not benefited our foreign commerce or fostered the development of our merchant marine; and (8) the system does not assure stability.

Intervener Department of Agriculture, as noted on pages 3 and 11 of the first recommended decision, believes (1) that the system adversely affects the free movement of agricultural products and farm supplies in foreign commerce; (2) that a shipper of those commodities should feel free to bargain for the cheapest rates without being penalized; (3) the non-contract rate is discriminatory if the contract rate is fair and equitable; (4) open competition would result in lower rates and have a favorable economic effect on agricultural products by increasing exports and reducing any surpluses that may exist; and (5) the system is not [fol. 384] necessary to achieve rate stability. The position of intervener Department of Justice is predicated upon (1) monopoly as it may be prohibited by section 14 (3) of the Act, and (2) retaliation or discrimination against a shipper for patronizing any other carrier. Intervener Himala contends that the contract rates are unduly discriminatory because the shipper gets the same service irrespective of whether he signs a contract.

Respondents' contentions, which appear on pages 4 and 11-15 of the first recommended decision, are, in brief, as follows: (1) the validity of the system in the foreign trade is firmly established; (2) the system helps prevent self destruction and provides protection from outside competition; (3) by charging the same rate, the conference lines must offer superior service to secure business; (4) the system assures a greater degree of stability than any other system known; (5) shippers generally favor the system; (6) shippers are not necessarily interested in getting the

lowest possible rate; (7) stability benefits all interests; (8) the small shipper is protected by the system; (9) forward trading is assured by the sytem; and (10) complainant itself has used the system.

In the first recommended decision it was found that the discrimination referred to in section 14(3) of the Act must be "undue" to be proscribed, the case of *American Express Co.* v. *United States*, 212 U. S. 522, being cited as authority for such conclusion. The exceptions filed by complainant to the recommended decision argue that the foregoing case does not support the finding, and cited the cases of *L. & N. Ry. Co.* v. *Mottley*, 219 U. S. 467, *Hocking Valley Ry.* v. *United States*, 210 Fed. 735, and *Sunday Creek* v. *United States*, 210 Fed. 747. The *L. & N. Ry. Co.* case has no pertinency to the problem here involved because the court was there interpreting what are now sections 1(7) and 6(7) of the Interstate Commerce Act, which deal with the issuance of passes and the charging of rates different from those on file. Since the *Sunday Creek* case merely follows the ruling in the *Hocking Valley Ry.* case, the last named case alone will be considered.

[fol. 385] The railroad in the *Hocking Valley Ry.* case was indicated for giving special concessions to a coal company, one of its shippers, in violation of the Elkins Act. The court found the railroad guilty. Upon appeal the conviction was affirmed. As to the particular point here under consideration, the Circuit Court of Appeals said (p. 743):

> "Nor do we overlook the contention that the word 'discrimination' inherently implies something unjust or unreasonable. In a certain sense, this is true, as is especially pointed out in Judge Kohlsaat's opinion in U. S. v. Wells Fargo Co. (C. C.) 161 Fed. 606, 610. That differentiation between shippers which was so trifling in amount and inoperative in character that it did not give one a real and substantial advantage over another, and, to that extent, indicate that it was unfair and undue, might not be within any fair definition of a penalized discrimination. That is all that the Supreme Court necessarily means in its reference to the purpose of the Elkins law to prevent 'all acts

of undue discrimination.' U. S. v. Wells Fargo Co., 212 U. S. 522, 531, 29 Sup. Ct. 315, 53 L. Ed. 635. By omitting the limiting words 'undue and unreasonable', in its denouncement of discrimination, the Elkins Act has avoided the contention that such a limitation was too vague to be the basis of criminal prosecutions, in which, upon the same facts, one jury might acquit and another might convict. If the court can say, as matter of law, that the distinction made is or might be material and substantial, giving to the favored one a real advantage, which others did not get, then it becomes the forbidden discrimination; if the facts do not justify this declaration, but the acts can, at most, have only negligible results or are on debatable ground, then it may well be that the principle referred to in [citing cases] would bar a prosecution."

It would seem, therefore, that the decision in the *Hocking Valley Ry.* case is not opposed to the conclusion reached by the Supreme Court in the *American Express Co.* case. Any doubt in the matter should be dispelled by the following statement of Chief Justice Taft in the later case of *United States* v. *Koenig Coal Co.*, 270 U. S. 512, 518:

> "The words advantage, concession and discrimination in the statute must be construed to mean unlawful concession, unlawful advantage, *unlawful discrimination.*" (Emphasis supplied).

Under the rule of interpretation announced by the Supreme Court in *U. S. Navigation Co.* v. *Cunard S. S. Co., Ltd.*, 284 U. S. 474, there can be little doubt that the word "discriminating", as used in section 14(3) of the Act, should be qualified by the words "unduly" or "unlawfully". Strength is given to this conclusion by reason of the fact that the words "or unfair" are used in conjunc- [fol. 386] tion with the word "discriminating," thus evidencing an intent by Congress to refer to similar things.

It was also found in the first recommended decision that the contract system is not a retaliation against a shipper for patronizing another carrier. No sound reason appears to alter this conclusion. The remaining inquiry under sec-

tion 14 (3) is whether the conference, in promulgating the contract system and requiring the signing of contracts, is resorting to other discriminating or unfair methods because the shipper has patronized any other carrier, or for any other reason.

The degree to which the contract system achieves its purpose is in proportion to the number of shippers who sign contracts, hence, the greater the number of signers the greater the effectiveness of the system. It is significant that complainant's vice president testified that when complainant's predecessor gave a shipper a special rate he was expected to give all his business to the predecessor. As already found in the first recommended decision, monopoly is not unlawful *per se* under the Act; on the contrary, it is specifically permitted when approved by the Commission pursuant to section 15 of the Act. The mere fact, therefore, that respondents can control the greater part of the traffic in the trade by means of the contract system does not necessarily make their action in that respect unlawful. In that connection, it is difficult to see how the contract system under consideration can produce a true monopoly when it is remembered that complainant as well as any other bona fide common carrier is entitled to admittance to the conferences and to share in their benefits. It is immaterial that complainant does not choose to join the conferences; the important thing is that it can do so if it wishes. The concept of a monopoly is that it has the power to prevent competition; in the present case, complainant can either continue as an independent or join the conferences on equal terms. That complainant has successfully competed with the conference lines is evidenced by the fact that it has averaged at least two sailings a month for many years.

[fol. 387] As pointed out on page 14 of the first recommended decision—"Exhibits of record indicate that the general pattern of rate basis used by complainant from November 6, 1939, to April 30, 1940, was conference rates less 10 percent. Effective August 1, 1946, complainant in effect adopted all the conference rates and classifications in the eastbound tariff, copying them word for word, including certain typographical errors. This tariff contains 581 commodities on which complainant's rates are from 3.3 per-

cent to 53.4 percent lower than the conference rates." It is abundantly clear from the record that the conference rates have been a boon to complainant and that complainant has been enabled to charge higher rates than would have been possible had there been unbridled competition with attendant open rates. Furthermore, the relative stability of the conference rates has afforded complainant a greater degree of flexibility in fixing its rates to draw cargo from the conference lines. Complainant's vice president in charge of liner business admits that his rates are fixed at the level that will secure the traffic.

It is true, as urged by complainant, that shippers are compelled to sign contracts through "economic coercion", but that phrase loses its sinister implication when the general situation is fully understood. The shipper is not forced, in the strict sense, to sign a contract; when he does sign it must be assumed that he has done so because he feels it to be to his advantage. Lower rates are not the only factor the shipper must consider. For example, complainant's service is not so frequent and its range of ports is not so extensive as that of the conference lines. As there have been no conference contracts in the trade since the beginning of World War II, it cannot be said that the contract system has prevented complainant from increasing its services or the range of its operation. Respondents' witnesses testified that the shipper is willing to pay higher rates in return for stability, which means more to him over a period of time than being able to shop around for lower rates.

Complainant and interveners vigorously maintain that there is no difference between the service accorded the shipper who signs and the shipper who does not sign a contract, and that there is thus no sound basis for a difference in [fol. 388] rates for the two classes of shippers. On first blush this might seem to be true. For example, the cargoes of both are transported on the same vessel and with the same degree of care, and the paper work incidental thereto is the same. In evaluating many of the factors involved, however, it must be repeated that there have been no contracts in the trade since the beginning of World War II, and therefore the conclusions herein depend to a great extent upon the situation as it existed prior thereto.

The chairman of the Trans-Atlantic Associated Freight Conferences from 1927 to 1943, who was largely instrumental in formulating the contract system in the present trade, testified that the main purpose of the system was to assure stability among the member lines, improve the relationship with shippers, and stabilize rates. Shippers generally favored the system and there was very little opposition to it. The present chairman believes the majority of shippers favor the system whereas complainant's vice president is of the opinion that approximately 90 percent of all shippers oppose the system. The letters of record from shippers opposing the reinauguration of the system do not indicate that they have been or will be damaged in any way, the objections being general in nature and nothing but exressions of preferences. One shipper admits that "we do have need to use said Conference Lines to insure the regular sailings that we must have in order to comply with our customers' instructions as to their shipments." Another shipper states that "the practical facts of the matter are, we have shipments to England, or we expect to have them, furthermore we are receiving shipments from Germany. * * * As the boats of the conference members comprise nearly all of the boats running, we do not see very much chance of avoiding the signing of the Conference Contract * * *." The chairman of the National Council of American Importers, composed of about 600 members in over 20 States, is of the opinion that the system furnishes uniform rates, prevents cut-throat competition, and results in regular scheduled sailings, good vessels, proper terminal facilities, and proper handling of cargo.

[fol. 389] Although there is no direct evidence in the record to that effect, it seems reasonable to assume that the workings of the respondent conferences are similar to those of the conferences involved in the various other regulatory cases which have received the attention of the Commission or its predecessors. If that be true, the conference lines, when the contracts have been signed, are in a fairly good position, based upon years of experience, to estimate the approximate volume of traffic to be expected during the term of the contract, and to arrange their sailings accordingly. To an extent this avoids the uneconomical operation

of excessive vessels. Each conference line, even though it charges the same rate as the other lines, must compete vigorously to secure the business, and for that reason the service of all the lines must be good. Furthermore, the small conference line probably gets some business which it might not get if there were open competition, and it is even possible that being a member of the conference enables the line to survive. The former chairman of the conferences testified that the system is more of a protective weapon for the conference lines than a fighting instrument against independent lines. There is no evidence that the contract system has eliminated a non-conference line from the trade.

In their effort to negative respondents' contention that the contract system makes for stability, complainant and intervener Department of Agriculture point out that of the 11 voting members of the eastbound conference as of the time of the hearing, only four have been members since 1938; six members joined between March 1946 and April 1947; three members have withdrawn in order to join a Canadian conference; and carriers may enter or withdraw from the conference at will. Complainant further points out that the sailing schedules of the conference lines, as published in the New York Journal of Commerce after November 1, 1948, when the system was supposed to have become effective, were the same as prior thereto. This feature was touched upon by the Commission's predecessor in *Rawleigh* v. *Stoomvaart et al.*, 1 U. S. S. B. 285, 293, where it was said:

> "In this connection it is not persuasive that the respondents' practice is unlawful because of the absence of materially different service before and since the inauguration of such practice by them. Manifestly, a [fol. 390] basic reason for the inauguration of the contract rate practice was to secure protection to the carriers of the established services, maintenance of which required heavy capital and overhead expenditures. These considerations, it would appear, justified adoption by the respondents of every reasonable measure, such as the contract rate practice per se, to assure the stability of competitive conditions necessary for the continuance of the regularity and frequency of service

> required by shippers in the trade and which, except for introduction of such practice, might well have become impossible."

The record is clear that respondents, over a period of years, have supplied regular sailings and sufficient tonnage to handle all normal traffic, except immediately following the termination of World War II, when there was a world-wide shortage of space for the tremendous amount of cargo offering. At the present time, there is a dearth of cargo for the available tonnage. The fact that the trade may be fairly stable (as of the time of the hearing) without the contract system is not conclusive that it will continue to be so. As observed in the *Rawleigh* case, *supra*, at page 291—

> "* * * the circumstance * * * that at the moment there appear to be no carriers threatening the trade's rate stability, gives no assurance to the respondents that they may not at any time find a reverse situation confronting them. Operators of vessels in foreign commerce of the United States may at any time and without warning be subjected to severe competition by unregulated tramp vessels of any nation or by vessels charted by shippers with large quantities of cargo to be transported. The exigencies of ocean transportation, and particularly in a long-voyage trade such as concerned in the instant case, too frequently approach such a vital character that they cannot be neglected by the vessel operator if he is to survive, nor treated as inconsequential by the Board in its determinations in complainant proceedings."

Stability may be achieved by non-fluctuating and self-controlled rates as well as by regular sailings. It is a well-known fact that rate wars are costly, engender bitterness, sometimes result in carriers suspending operation, can lead to a monopoly by the lines which are strong enough to survive, seldom generate new business, and usually disrupt commerce generally. The contract under consideration guarantees to the shipper that his rate will not be changed for approximately 80 days, and longer periods are granted

when justification therefor is shown. The former chairman of the conferences stated that conferences are reluctant to change contract rates. The shipper is thus enabled to [fol. 391] engage in forward trading, so necessary in foreign commerce, and frequent bargaining of rates is avoided. Although the record indicates that a longer period of protection might be desirable, the fact remains that the shipper would receive a decided advantage under the contract.[3]

The small shipper is put on the same plane with the large shipper in so far as his transportation costs are concerned, and he therefore is better able to compete.

It is immaterial that non-signers of the contract receive some of the benefits of the system; it frequently happens that the public in general profits by the independent actions of certain persons. As was said in the *Rawleigh* case, *supra*, at page 292:

> "The complainant, except as to rate, is accorded every advantage of such service similarly as are such other shippers, although it has the liberty of at any time patronizing any competition destructive of the stability and regularity of such service. In return for the rate disadvantage which it incurs in the capacity of a noncontract shipper there must, in fairness, be considered the prospect not only of recoupment by complainant but of its obtaining, through the exercise of such liberty, advantages in rates over those shippers who have agreed to confine their shipments to the respondents."

There is no proof that the higher non-contract rates eliminate a large part of our commerce because of keen foreign competition, nor is there any evidence that the American merchant marine has suffered because of the contract system. On the contrary, if, as contended by complainant, the system results in a higher rate level than would be the case if there were unlimited competition, the fact that most American companies are members of conferences would tend to bolster their financial position. The former chairman of the Trans-Atlantic Associated Freight Conferences testified that it is

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[3] See further discussion of this point later herein.

to the mutual benefit of shipper and conference lines for the shipper to do as much business as possible, and that if the conference rates are too high the goods will not move. It seems to follow as a necessary concomitant that conference rates which are too high would encourage non-conference competition and thereby redound against the interests of the conference lines.

[fol. 392] The record contains nothing but general statements that the conference rates are unduly high. Merely because the lines are willing to take less for transporting the cargo of contract shippers does not mean that the non-contract rates are unreasonable to the extent they exceed the contract rates. It is simply a willingness on the part of the lines to be content with a lesser profit in return for the knowledge that probably they will secure the great bulk of cargo moving on the route. Complainant contends that since foreign-flag lines dominate the two conferences involved they can block any effort made to lower the conference rates. Aside from the fact that a representative from an American-flag and one from a foreign-flag line denied that the foreign-flag lines ever use their position to the detriment of the trade—and those witnesses were not cross-examined on that point by complainant—it could just as well be said that American-flag lines could block any effort on the part of their foreign-flag competitors to raise the rates inasmuch as the conference agreement requires a unanimous vote to change rates. As a practical matter, the independent line acts as a check on the level of conference rates. Complainant believes that the inability of the independent to compete deprives shippers of the benefits of lower rates, and that if rates were fixed on a genuine competitive basis the shipper would pay no more than was reasonable for the service. If it be assumed that complainant's lower rates are compensatory, however, any savings to shippers must be viewed in long-range perspective, otherwise they will be lost in the ultimate destruction of the rate level. If it should develop that the conference rates are detrimental to the commerce of the United States, the Commission has full authority to rectify the situation by disapproving the conference agreement unless the rates are changed.

Complainant argues that since the cost of operation of

foreign-flag vessels is lower than corresponding American-flag costs, a rate level satisfactory to the American-flag conference lines should be even more satisfactory to the foreign-flag conference lines, and that to that extent the latter enjoy a subsidy. Even if this were true it would not be a sufficient reason alone to condemn the contract system. In the absence of a conference in the trade, the fact that foreign-[fol. 393] flag lines might be able to charge lower rates than American-flag lines would easily lead to a rate war or could result in curtailed services, either of which would be harmful to the shipper and to the carriers in the long run. To be sure, the shipper is entitled to and should get every possible advantage flowing from low rates, but there is a point below which a rate ceases to be to his benefit. It therefore boils down to which is more important, the questionable and temporary advantage to the shipper or the long-range welfare of commerce in general. The answer, which is almost self-evident, is that stability fully justifies rates which are the same for all conference lines, American as well as foreign, even though some or all of the latter might be able to operate at lower rates.

Intervener Department of Agriculture introduced exhibits showing (1) the volume of selected animal and vegetable products exported from the United States to all foreign countries during the fiscal year ending June 30, 1948, (2) the volume of such commodities exported to the Netherlands, Belgium and Luxembourg, and Germany in the same period, and (3) the difference between the proposed contract and non-contract rates on the traffic referred to in No. (2). It was estimated that the difference in the freight charges represents an increase of approximately 20 percent. As noted hereinbefore, the Department believes that the contract system adversely affects the free movement of agricultural products and farm supplies, and that open competition as to freight rates would have a favorable economic effect by increasing exports and reducing any surpluses that may exist. Such argument, while possibly sound in theory, has no basis in fact in the present proceeding since the record contains no evidence whatever that the movement of agricultural commodities would definitely be increased merely because of lower rates. Furthermore,

there is no evidence that the rates on such commodities would be lower even if there were no contract system in the trade.

[fol. 394] *The contracts.* Although the westbound contract is involved in this proceeding, no specific objections to any of its provisions have been raised. Since this is an adversary proceeding and not an investigation by the Commission, the examiner feels that no duty devolves upon him to explore the westbound contract on his own initiative and without the benefit of assistance from the parties or counsel. All references and conclusions hereinafter are therefore, to the eastbound contract except, of course, where they might be applicable in principle to a corresponding provision of the westbound contract.

Complainant argues that the contract does not obligate the conference lines to furnish any particular service or the shipper to ship any particular amount of cargo. Intervener Himala contends that the contract is unenforceable; that there is no legal consideration for the contract; that the contract is so broad that the shipper is compelled to ship via conference vessels against the instructions and the best interest of his principal, the buyer, and that the penalty for so doing is an unjust and unreasonable charge; that the contract is one-sided; that the penalty clause is unduly discriminatory and retaliatory; that the contract is ambiguous; that the port clause is unduly discriminatory; that the granting of contract rates to the Government on commercial shipments without requiring the Government to sign a contract is unduly discriminatory; and that the contract is illegal because American shippers are subject to penalty by American carriers if they ship via non-conference cariers from a Canadian port.

1. The contract contains the following excerpts:

> "In consideration of the rates and other conditions stated herein, the Merchant agrees to offer or cause to be offered to the Carriers for transportation by them * * * all shipments of the commodities mentioned (or provided) below [to Belgium, Holland, and Germany] * * *.

> The Carriers agree, subject to the provisions hereof, to transport said shipments on their vessels sailing to the aforesaid countries.
>
> * * *
>
> The Carriers severally agree to furnish the Merchant at the rate or rates named or provided for herein space in such vessels as they may respectively load at said loading ports for transportation and discharge at the ports desired, provided that suitable unbooked space is available therein when the Merchant makes application."

[fol. 395] The cases of *North German Lloyd* v. *Mexican Petroleum Corp.*, 24 F. 2d 46, *Tweedie Trading Co.* v. *Parlin & Orendorff Co.*, 204 Fed. 50, and *Holt Motor Co.* v. *Nicholson Universal S. S. Co.*, 56 F. Supp. 585, are cited as support for the contention that the contract lacks mutuality and is indefinite. None of those cases, however, involved a contract of the nature here being considered. In contrast, the contract under attack in the later case of *Associated M. & M. Corp.* v. *Swedish Line, Ltd.*, 84 F. Supp. 819, aff'd 140 F. 2d 863, was of the same general nature as the present contract, but no question was raised as to its legality. The examiner prefers to follow the inference flowing from the *Associated* case. See Williston on Contracts, Revised Edition, section 141. Primarily, the inquiry must be addressed to whether the contract violates the Act and not to whether it is binding as a matter of law. The contract has a colorable sufficiency and in that respect it cannot be said that it violates the Act. See *Wood* v. *Duff-Gordon*, 222 N. Y. 88. To obviate any question that may exist as to the completeness of the contract, however, respondents might see fit, as has the Far East Conference, to agree "to maintain a steamship service which shall, so far as concerns the frequency of sailings and the capacity of their vessels, be adequate to meet all of the reasonable requirements" of the trade.

2. The argument that there is no consideration for the contract is premised on three things: (1) there was no rate reduction for those who signed the contract; (2) the eighty-

day rate security is too short to be of any value; and (3) the non-acceptance of a rate increase affecting one commodity gives the conference the option of cancelling the contract as to all the other commodities even though the rates on the latter may be satisfactory to the shipper.

(a) It is urged that the conference should have made the non-contract rates the same as the current rates and then made the contract rates lower. This position is without merit because the conference can lower or raise its rates at any time. The fact that the conference chose the present method does not mean that there was no consideration for the contract. There need not have been an actual change in the rates applicable to the contract signer; it is sufficient if the signer gets the lower of two rates in return for his agreement to give the conference lines all his business. The same situation occurred in *Contract Routing* [fol. 396] *Restrictions*, 2 U. S. M. C. 220, but no one questioned the right of the conference to set the rates in that fashion. As mentioned hereinbefore, there is no evidence in this proceeding as to the reasonableness of the two types of rates.

(b) It is claimed that 80 days is too short a period for the protection of the shipper. As also noted, however, this period will be extended by the conference in a proper case. Although a period longer than 80 days might be desirable, there is no showing that such period, under present world wide conditions, is inadequate. This is a matter which may have to be adjusted after the contract becomes effective, but does not justify disapproval of the contract at this stage.

(c) The contract is an all-commodity agreement, i.e., the shipper is obligated to use the conference lines for all his cargo. The net result is that if the conference gives notice of an increase in rates on any of the commodities covered by the contract the shipper must agree thereto or else he loses the benefit of the contract rates on his other commodities. For example, if the shipper were to export 25 commodities and the increase is on one only, his position on the other 24 would be jeopardized if he failed to accept the increase on the one. This would be a clear-cut case of the tail wagging the dog, and it would be manifestly unfair to saddle the shipper with this choice.

3. Although the contract embraces all shipments, the mere fact that the buyer at times may have title to the goods or may have title and leaves the routing to the shipper, does not invalidate the contract *ipso facto*. As to such shipments the contract simply cannot be enforced if it would prejudice the shipper in his contractual relations with the buyer. This also is a matter which can be dealt with by the conference as the individual case arises.

4. The case of *Campbell Soup Co.* v. *Wentz*, 172 F. 2d 80, is cited to show that the contract is too one-sided and cannot be enforced. All that need be said in connection with the foregoing case is that the court remarked several times that the contract was not illegal but was too unconscionable to be enforced in a court of equity. A mere reading of the opinion readily differentiates the contract there involved from the present contract.

[fol. 397] 5. Clause 4 of the contract provides in part as follows:

> "If the Merchant shall make shipment hereunder for the benefit of some party not holding or conforming to a similar agreement, or shall make shipment in violation hereof, then the Carriers shall have the option at any time to declare this agreement terminated, and the Merchant shall be liable to the Carriers for liquidated damages equal to twice the amount of freight that would have been payable under this contract in respect of the shipment constituting the violation."

(a) The questionable feature of the right to terminate the contract is the option enjoyed by the conference, which permits unlimited latitude in determining whether the option will be exercised. Conceivably, the conference might terminate the contract in the case of one shipper and not in the case of another. All shippers should be treated alike. If the conference desires to terminate the contract it should be mandatory, unless the violation is unintentional. See *Pacific Coast European Conference*, 3 U. S. M. C. 11.

(b) As already noted, clause 4 permits the conference, in case the contract is violated, to collect damages equal to

twice the amount of the freight that would have been payable on the shipment constituting the violation. The retroactive feature condemned in *Pacific Coast European Conference, supra,* is not here present. The sole question, therefore, is whether the damages are true liquidated damages or a penalty; if the latter, they would constitute a retaliation against a shipper for patronizing another carrier, and therefore a violation of section 14(3) of the Act.

Whether a provision of a contract is penal in nature or is true liquidated damages is a question of law, and does not depend on the natural meaning of the language used. The mere fact that a penalty is referred to in the contract as liquidated damages is immaterial. A penalty subjects the breaching party to a liability disproportionate to the damages caused by the breach while liquidated damages is a sum fixed as an estimate of the extent of the injury which a breach will cause. The validity of the provision is to be judged as of the time of the making of the contract and not as of the time of the breach. The sum agreed upon, if true liquidated damages, must be reasonable, the benefit in that respect being accorded where ordinary principles [fol. 398] of compensation cannot easily be applied and will not afford certain relief. Williston on Contracts, Revised Edition, sections 770, 776, 777, 778, and 783. The rule is succinctly stated as follows in Restatement of the Law, Contract, section 339:

> "(1) An agreement, made in advance of breach, fixing the damages therefor, is not enforceable as a contract and does not affect the damages recoverable for the breach, unless
>
> (a) The amount so fixed is a reasonable forecast of just compensation for the harm that it caused by the breach, and
>
> (b) the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation."

It must be kept in mind that the contract does not run to the benefit of the individual lines but rather to the lines as a group. To forestall a breakdown of the plans made by the conference to allocate the proper amount of tonnage

for the contract period there must be some effective way to deter shippers from breaking their contracts. It is not easy—in fact, it would appear to be impossible—to ascertain with any reasonable degree of exactitude the actual damages that would be suffered by the conference lines as a whole if a contract is broken. Many factors would have to be considered.

In *North German Lloyd* v. *Elting*, 96 F. 2d 48, the bill of lading provided that "the shipowner is entitled, in cases of incorrect declaration of contents, weights or values of the goods, to claim double the amount of freight which would have been due if such details had been correctly given." In upholding that agreement the Circuit Court of Appeals for the Second Circuit said as follows:

> "Ocean freight rates are wholly a matter of contract between shipper and carrier, and we can see no reason why they may not stipulate for a difference in rates between goods truly and falsely described. As this case well illustrated, the carriage of the latter is likely to entail additional trouble, expense, and long delay in obtaining payment for the transportation service. Hence, we think an agreement for double the regular rate is not so unreasonable in amount as to constitute a penalty rather than an agreed charge for the service."

The *North German Lloyd* case is relied upon by respondents to justify the exaction of double freight. The reasoning behind that case, however, would not apply to a breach of the present contract. In the first place, although rates [fol. 399] in the foreign trade are, as the court said, a matter of contract between the carrier and the shipper, the present contract dovetails with and flows from the conference agreement itself and must not be violative of any of the provisions of the Act or in contravention of section 15 thereof. Secondly, the extra freight for false billing has some plausible basis in that the cargo has been transported and the carrier is put to further expense and effort because of the shipper whereas the double-freight feature of the contract applies in spite of the fact that the conference lines never carry the cargo. The situation might

be different if the conference were to collect the actual freight which the shipper would have paid had he used a conference line. The damage suffered by the lines as a group is indefinite in character because there is no way to tell by which conference line the shipment would have moved; hence, to collect twice the freight and distribute it among all the lines cannot reasonably be justified. It is interesting in this particular respect to compare the eastbound contract with the westbound contract, the latter declaring that—

> "If the Merchant makes any shipment in violation of this Agreement the Carriers shall have at any time the option to declare the Agreement terminated, without prejudice, however, to the right of the Carriers to also claim for losses suffered by such violation."

6. The contention that the contract is ambiguous is based upon an interpretation placed upon a similar contract by respondents' chairman when acting as chairman of the North Atlantic Mediterranean Conference, supplemented by his testimony in the present proceeding that the same interpretation might not be given were the present contract involved. This, it is argued, permits discrimination. The point is untenable. It can always be maintained that a contract might, in the future, be interpreted in a manner detrimental to the interests of a party, but such a contention would not justify invalidation of the present contract.

7. Complaint is made to the following part of clause 2 of the contract:

> "This contract covers all export shipments * * * moving out of United States North Atlantic * * * ports * * * and all said shipments shall be tendered to the Carriers for their vessels which may load at the ports of Norfolk, Newport News, Baltimore, Philadelphia, New York, Boston, Portland * * * and failure so to tender any such shipments to the Carriers or ship-
> [fol. 400] ment of them by vessels other than those of the Carriers shall be a violation of this contract."

The argument is that since the shipper must tender his shipments at the named ports although there is no "clear

understanding" by the carriers to serve those or any ports in the range, this is an arbitrary routing restriction in that it gives the named ports an undue and unreasonable preference and advantage and subjects every other port in the range to undue and unreasonable prejudice and disadvantage, especially when the cargo originates at the outport or its surrounding territory.

The conference lines have chosen to limit their activities to the ports named in clause 2 of their contract. If the cargo originates at an interior point from which the freight rates are the same to the named ports as to the port which the shipper wishes to utilize, it would not appear to be a hardship to require the shipper to route the cargo via the named ports, all other things being equal. On the other hand, if the cargo originates at the port which the shipper wishes to use, or in the territory contiguous thereto, and the shipper would have to pay additional freight to get it to the named ports, this would be an unreasonable requirement. Furthermore, if the shipper were compelled to route the cargo by the named ports under those circumstances, the other ports in the range would be at a decided disadvantage in spite of the fact that large sums of money may have been spent on their development. This problem, however, is a matter of application in the particular case and does not justify invalidating the contract.

8. There is evidence in the record that the Department of Agriculture, in addition to shipping relief cargoes on respondents' vessels, also ships commercial cargo which is competitive with private shipments. The Department signs no contracts but receives the contract rate. It is argued that this is undue discrimination in so far as commercial shipments are concerned.

In the first recommended decision it was suggested that the granting of contract rates to the Department on competitive commercial cargo, without requiring the Department to sign a contract, was a possible violation of the Act. As the granting of lower rates on Government cargo is a practice which may prevade the whole shipping in- [fol. 401] dustry and have many ramifications, no finding

will be made with respect thereto on the present limited record.

9. The contract is a joint undertaking signed on behalf of the lines operating out of United States ports as well as the lines operating out of Canadian ports, and it is contended that if an American shipper uses a non-conference line out of Canada the lines operating out of United States ports can assess him twice the amount of the freight, which would be unduly prejudicial to him.

To get a complete picture of this particular situation the basic conference agreement must be taken into consideration. Agreement No. 4490 states that the purpose of the conference is "to promote commerce from North Atlantic ports of the United States in the Portland, Me./Hampton Roads range, to ports in Belgium, Holland and Germany." The scope of the agreement is not broadened merely because the conference has an agreement with the Canadian Continental Eastbound Freight Conference (U. S. M. C. No. 4490-A) to assure "stability of ocean rates and parity of the same" on cargo to common destinations. It follows, therefore, that the conference cannot control the routing of traffic moving from the United States through Canada, and that it cannot collect double freight from an American shipper routing his cargo via a non-conference vessel out of a Canadian port. See *Contract Routing Restrictions, supra.*

Conclusions

The contract system. The contract system proposed by respondents is not unlawful *per se* nor is it a retaliation against shippers for patronizing any other carrier (see first recommended decision). In view of the beneficial effect of the system upon the trade over a period of years prior to World War II, it must be presumed that the reinauguration thereof would produce a similar effect. With that premise, there would not be a resort by respondents "to other discriminating or unfair methods, because such shipper has patronized any other carrier." The use of the system, therefore, will not constitute a violation of section 14 (3) of the Act.

[fol. 402] Whether the system is in contravention of section 15 or in violation of sections 16 or 17 of the Act rests in the sound administrative discretion of the Commission. *U. S. Navigation Co.* v. *Cunard S. S. Co., Ltd.*, 284 U. S. 474, 485. There must be a weighing of interests and a balancing of the equities. That the system does restrict complainant's operations and prevents shippers from using any carrier they please cannot be denied, but the Commission must not shut its eyes to realities. The conference system is sapped of its vitality if there be no method of binding the majority of shippers in the trade. Without the contract system, or some other effective means, the life of a conference would be short in the face of rate manipulations by independent lines or the influx of tramp vessels. Respondents cannot be expected to put off the use of the system until trouble actually brews in the trade, for rate wars completely demoralize commerce and all interests suffer needlessly. The possibility of unrest in foreign shipping is even more pronounced today in view of the quest by foreign-flag lines for United States dollars. Surely the Commission should use every means at its disposal to prevent a breakdown of international trade, and any plan utilized by respondents to forestall instability should be upheld unless it is clearly opposed to a positive rule of law. The following statement by Justice Brandeis in *Luckenbach* v. *McCahan Sugar Co.*, 248 U. S. 139, 149, is apposite to the present discussion:

> "It is creditable to the ingenuity of business men that an arrangement should have been devised which is consonant both with the needs of commerce and the demands of justice."

The Commission is being asked to declare unlawful a practice not yet in existence. To outlaw the contract system without permitting respondents to try it out—unless the practice is unlawful *per se*, which it is not—would be dangerous. This being an adversary proceeding, the burden is upon complainant and its supporting interveners to convince the Commission of the undesirability of the system in the trade under consideration. The burden has not been met.

[fol. 403] *The contracts.* The proposed contracts are basically unobjectionable, but certain of their provisions do not conform to the spirit or the letter of the Act. The contracts should be altered, therefore, to overcome the following deficiencies:

1. The contract should not be terminated as to all commodities covered by it where the shipper refuses to accept rate increases on some but not on all of his commodities. To permit this would be unfair and would place a premium upon the shipper's sense of security.

2. The option resting with the conference to terminate the contract in case of its breach by the shipper is too elastic and permits of possible discrimination among shippers.

3. The exaction of twice the amount of freight on the particular shipment where the cargo has moved on a non-conference vessel is a penalty and amounts to a retaliation against a shipper in violation of section 14 (3) of the Act.

The examiner is constrained to say at this point, however, that he believes it unfortunate that some of the findings respecting the contracts have been made on an unsatisfactory record and consequent insufficient treatment by the parties or their counsel. Different conclusions possibly might be justified on a more inclusive record.

Recommendations

The Commission should find (1) that the use of the contract system by respondents will not be in violation of the Shipping Act, 1916, or in contravention of section 15 thereof; and (2) that the contracts proposed to be used in connection with the system are not unlawful except as shown in the conclusions hereinabove. The complaint should be dismissed, but respondents should be admonished to amend their contracts in such manner as to eliminate the objectionable features thereof.

[fol. 404] Findings of Fact and Conclusions of Law

Complainant requests the following findings of fact and conclusions of law:

Findings of Fact

1. (a) Except for the period of Government control during World War II, complainant and its predecessor,

Isbrandtsen-Moller Co., Inc., have been continuously engaged since 1931 in common carrier transportation by water of property in the North Atlantic trade between ports on the North Atlantic coast of the United States and ports in Belgium, Holland, and Germany.

Yes.

(b) Since 1933, complainant and its predecessor, Isbrandtsen-Moller Co., Inc., have maintained regularly scheduled sailings in such trade of a minimum of twice monthly. In 1948, complainant operated 38 sailings in such trade.

Yes.

(c) Since the end of government control of shipping on March 2, 1946, complainant has operated only American flag ships in such trade.

Yes.

2. Respondents are member lines of the North Atlantic Continental Freight Conference and the Continental North Atlantic Westbound Freight Conference. The following respondents are members of the North Atlantic Continental Freight Conference, and operated in 1947 the berth sailings indicated: A/S J. Ludwig Mowinckels Rederi, 26 sailings; Black Diamond Steamship Corp., 100 sailings; Compagnie Generale Transatlantique, 11 sailings; Compagnie Maritime Belge, 30 sailings; Cunard White Star, Ltd., 4 sailings; Damskibsselskabet af 1912 A/S and A/S Dampskibsselskabet Svenborg, 24 sailings; Ellerman's Wilson Line, Ltd., 3 sailings; N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij, 76 sailings; United States Lines Company, 116 sailings; and Waterman Steamship Corporation, 89 sailings. In addition, 19 sailings were operated by three Canadian lines which withdrew from the Conference in 1948. All of the members of the North Atlantic Continental Freight Conference, except Cunard White Star, Ltd., Dampskibsselskabet af 1912 A/S, A/S [fol. 405] Dampskibsselskabet, and Ellerman's Wilson Line, Ltd., are members of the Continental North Atlantic Westbound Freight Conference, which also includes respondent South Atlantic Steamship Line, Inc.

Yes.

3. Each of the above-named respondents is engaged as a common carrier by water in the transportation of property in foreign trade between the North Atlantic ports of the United States and the ports of Holland, Belgium, and Germany. The respondents engaged in the Eastbound trade from the United States are associated together in the respondent North Atlantic Continental Freight Conference under an agreement known as Conference Agreement No. 4490, first approved by the Commission under Sec. 15 of the Shipping Act of 1916, as amended, on August 24, 1935, and thereafter continuously approved as amended down to and including the Order of the Commission dated January 2, 1948 which, under an agreement known as Conference Agreement No. 4490-6, approved the reconstitution of the Conference. Only four members of the present Conference were members prior to World War II. Since March 2, 1946, six new lines were admitted as members. In 1947, the Conference members operated a total of 498 berth sailings.

Yes.

4. The respondents engaged in the Westbound trade from ports in Holland, Belgium, and Germany to ports on the North Atlantic coast of the United States are associated together in the respondent Continental North Atlantic Westbound Freight Conference, under an agreement known as Conference Agreement No. 7000, first approved by the Commission under the Shipping Act of 1916, as amended, on February 16, 1940 and thereafter continuously approved as amended on May 7, 1948.

Yes.

5. The respondents members of the North Atlantic Westbound Freight Conference are also parties to a cross-agreement with the French North Atlantic Westbound Freight Conference, known as Conference Agreement No. 7920, first [fol. 406] approved by the Commission, under Sec. 15 of the Shipping Act of 1916, as amended, on July 1, 1947 and thereafter continuously approved as amended to August 24, 1948, when the Commission approved Conference Agreement No. 7920-1.

Yes.

6. Conference Agreements 4490-6 and 7920-1 undertake

to authorize, among other Conference practices, the use of specific contract and non-contract rates.

Yes.

7. Prior to World War II, contract/non-contract rates had been applied to only a limited number of commodities moving in the North Atlantic Continental trade.

The word "limited" is misleading. There were under contract about 706 items out of between 1700-1900 items in the tariff.

8. Since March 2, 1946, the contract rate system, with the exception of five commodities, has not been used in the North Atlantic Continental trade.

The record shows the contract system has not been in effect in the present trade since March 2, 1946. Although witness Crinkley testified that five commodities were under contract during that time, the record does not show what they were or the nature of the contract.

9. Since the close of World War II the bulk of the cargo moving in the North Atlantic has been for the account of the Government, which is required by law to purchase transportation service competitively and which, consequently, cannot sign exclusive contracts. Even in trades where the contract rate system is in effect the Government demands and receives the lower contract rates without signing a contract.

The first sentence is correct down to the comma on the second line; the record is not conclusive as to the rest of the sentence. The record is not sufficient to support the scope of the second sentence.

10. On or about October 1, 1948, respondent Conferences sent notices to all known shippers in the North Atlantic trade that effective November 1, 1948, the exclusive patronage contract rate system would be inaugurated [fol. 407] simultaneously on both East and Westbound carriage, covering all commodities transported in that trade except ad valorem rates, human ashes, coal and coke in bulk, corpses, household or personal effects, explosives, grain in bulk, livestock, and lift vans.

Yes.

11. The notices sent to the trade and the tariffs filed with the Commission indicated that the contract rates to

be instituted under the proposed exclusive patronage rate system were to be the same freight rates as were then currently in effect.

Yes.

12. The current rate scale in effect on October 1, 1948 represented largely the War Shipping Administration rate scale, which was carried over into private operations when shipping was returned to private ownership on March 2, 1946. While some adjustments had been made since March 2, 1942, in the pre-existing high wartime rate scale, the rate level on October 1, 1948 was substantially Tariff #17, which was approved for wartime operations by the War Shipping Administration and which made allowance for many war-inflated cost factors, such as war risk insurance, bonus payments to seamen, and high oil charges. Tariff #17 also included a flat surcharge of 15%, which was also continued in effect after return of shipping to private operation of March 2, 1946.

Yes.

13. The notices sent to the trade on October 1, 1948 by respondent Conferences informed shippers that the proposed contract rates would on and after November 1, 1948 be available only to those shippers who should sign a contract whereby the shipper agreed for the period from November 1, 1948 to December 31, 1949 to effect all his transportation requirements by means of respondent Conferences' lines exclusively.

Yes.

14. Shippers were informed that failure to sign such a contract would entail application of their shipments by respondents' lines after November 1, 1948 of non-contract rates which were fixed by means of an arbitrary differential at a level 20% to 30% higher than the currently existing scale.

Yes.

[fol. 408] 15. The contract distributed to the trade on October 1, 1948 by respondent North Atlantic Continental Freight Conference provided that, if the shipper made a shipment in a non-Conference line in violation of the contract, the shipper should be liable for twice the amount of freight that would have been payable if the shipment

had been effected under the contract over respondent's lines. The contract also gave the carriers the option to terminate the agreement for such a violation, which would render the shipper liable for the higher non-contract rates on future shipments effected on respondent's lines. The contract distributed by the Continental North Atlantic Westbound Freight Conference provided that the respondents might terminate such agreement without prejudice to a claim for any losses suffered, and might thereafter apply non-contract rates to all shipments made by the merchant over respondents' lines.

Yes.

16. The contract tendered the trade on October 1, 1948 obligated the merchant to effect all of his export shipments in the North Atlantic Continental trade via respondents' lines, but did not bind the merchant to export any commodities at all. Such undertaking to confine his shipments exclusively to respondent's lines was the sole consideration entitling the shipper to the benefit of the lower contract rates. The contract further provided that failure to tender any such export shipments as the shipper might make to respondent lines should be a violation of the contract.

The first and third sentences are correct. The second sentence calls for a conclusion of law.

17. With regard to the respondent carriers' obligations under the contract, the contract provided that respondents agreed to furnish the merchant at contract rates "space in such vessels as they may respectively load at said loading ports for transportation and dispatch at the ports desired, provided that suitable unbooked space is available therein when the merchant makes application."

Yes.

[fol. 409] 18. With regard to rates the contract provided:

> "The rates herein specified are subject to be increased reasonably from time to time. Any notice of increase shall be deemed accepted by the Merchant unless within 20 days after his receipt of the notice of increase he gives the Carriers written notice of non-acceptance. In event of such non-acceptance the Carriers shall have the option at any time within 20

days after receipt of the Merchant's notice to cancel this agreement on giving the Merchant at least 60 days written notice, but if such notice is not given this agreement shall remain in effect."

Yes.

19. For forward trading shippers generally require firm rate protection for periods as long as a year, and require more assurance of sailings and space than are provided in the contracts involved here.

The record does not support this statement.

20. Because most shippers require more service than is available via independent lines, most shippers are induced to sign the contract in order to escape paying the higher non-contract rates for such portion of their transportation requirements which business exigencies require them to effect via respondents' lines.

This is a matter of opinion and is not supported by the record.

21. Because the exclusive patronage contract system prevents them from securing their transportation service from whatever source they prefer, and denies them the opportunity to utilize all the service available, Conference and non-Conference, most shippers are opposed to the contract system.

The record does not support this statement.

22. Despite their opposition to the exclusive patronage system, approximately 3,000 shippers in the North Atlantic Continental trade, out of a total of approximately 4,500 solicited, executed respondents' contracts prior to the issuance of the injunction by the United States District Court for the Southern District of New York which enjoined the further solicitation of such contracts pending the determination of this proceeding.

The numbers mentioned are correct but the record does not support the statement that approximately 3,000 shippers signed the contract "despite their opposition to the exclusive patronage system."

[fol. 410] 23. The form of merchant's contract distributed to the trade by respondents herein has neither been approved by the Commission nor submitted to the Com-

mission for its approval. The form of contract was, however, attached to the corrections to tariff No. 18, which were rendered necessary by the institution of the contract system and which were filed with the Commission on October 1, 1948.

Yes.

24. The necessary effect of applying the exclusive patronage contract system in the North Atlantic Continental trade to all commodities moving in that trade is to narrow severely the number of American shippers whose patronage complainant may solicit, and to make it extremely difficult for complainant to continue to operate in such trade as an independent non-Conference line.

Correct except that the words "extremely difficult" call for a conclusion better known to complainant than to the examiner.

25. To the extent the application of the exclusive patronage system to all commodities moving in the North Atlantic trade denies complainant access to American shippers, it necessarily subjects the shipper to a reduction in the amount of service theretofore available to him, Conference as well as non-conference, and tends to eliminate independent shipping as a check against rates and services exclusively controlled by the Conferences.

The contract system does not subject the shipper to a reduction of conference services; the same is not true as to non-conference service. The system would tend to eliminate independent shipping as a check against rates and services exclusively controlled by the conference, but the record shows that complainant as an independent, has effectively acted as a check on respondents' rates and services.

Conclusions of Law

1. The contract/non-contract rate system proposed to be put into effect by the Respondents as of November 1, 1948, provides for a difference in rates for identical services based solely upon whether or not the carrier secures the [fols. 411-412] shipper's service exclusively and is, therefore, discriminatory in violation of Section 14 of the Shipping Act of 1916, and is unlawful.

No.

2. The contract/non-contract rate system proposed to be put into effect by the Respondents as of November 1, 1948, retaliates against a shipper who refuses to sign such a contract, or patronizes a carrier who is not a member of Respondent's Conferences, and, therefore, violates Section 14 of the Shipping Act of 1916, and is unlawful.

No.

3. So much of Conference Agreements No. 4490-6 and 7920-1 as purport to authorize the use of the aforesaid contract/non-contract rate system, or any similar practice having a like purpose and effect should now be disapproved under Section 15 of the Shipping Act of 1916, and said practice should be held unlawful.

No.

[fols. 413-429] Report of the Board, December 1, 1950. Omitted. Printed side page 59 ante.

[fols. 430-432] Order of the Federal Maritime Board. Omitted. Printed side page 76a ante.

[fol. 433]

BEFORE THE UNITED STATES MARITIME COMMISSION

Transcript of Hearing

Board Room, 80 Broad Street,
New York, New York,
May 9, 1949

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

C. W. Robinson, Examiner.

APPEARANCES:

John J. O'Connor, Esq., (29 Broadway, New York, N. Y.) and William L. McGovern, Esq., (1707 H Street, N.W., Washington, D. C.) appearing for the complainant, Isbrandtsen Company, Inc.

Roscoe H. Hupper, Esq., and Burton H. White, Esq., (Burlingham, Veeder, Clark & Hupper, 27 William Street, New York, N. Y.), appearing for the respondents.

Hymen I. Malatzky, (82 Wall Street, New York, N. Y.), appearing for Himala International Exporters and Importers, Intervenor.

Joseph E. McDowell, Esq., (Room 3239, Department of Justice, Washington, D. C.), representing the Department of Justice.

[fol. 434] Henry A. Cockrum, Esq., (Office of the Solicitor, Department of Agriculture, Washington, D. C.), representing the Secretary.

Charles D. Turner, (Transportation Specialist, United States Department of Agriculture, Washington, D. C.), representing the Secretary.

Paul D. Page, Jr., Esq., and George F. Galland, Esq., (Office of the Solicitor, U. S. Maritime Commission, Washington, D. C.), representing the United States Maritime Commission.

[fol. 435] PROCEEDINGS

Colloquy

Examiner Robinson: We will come to order, please.

The United States Maritime Commission has set for hearing at this time and place Docket No. 684, entitled, as it appears in the complaint, in the matter of North Atlantic Continental Freight Conference Agreement No. 4490-6 and French North Atlantic Westbound Freight Conference North Atlantic Westbound Freight Conference Agreement No. 7920-1.

Who appears for the complainant?

Mr. O'Connor: John J. O'Connor, 29 Broadway, New York City, and William L. McGovern, 1707 H Street, N. W., Washington, D. C.

Examiner Robinson: Who appears for the respondent?

Mr. Hupper: Roscoe H. Hupper, and Burton H. White.

Examiner Robinson: Who appears for intervenors who are already in the case?

Mr. Malatzky: Hyman I. Malatzky, appearing for Himala International Exporters and Importers.

Mr. McDowell: Joseph E. McDowell, Department of Justice, Washington, D. C.

Henry A. Cockrum, Office of the Solicitor, and Charles D. Turner, Transportation specialist, Department of Agriculture, appearing for the Secretary of Agriculture.

Mr. Galland: Paul D. Page, Jr. and George F. Galland, [fol. 436] representing the United States Maritime Commission.

Examiner Robinson: Are there any further appearances on behalf of the intervenors already in the case?

(No response.)

Are there any further people who wish to intervene at this time?

(No response.)

Mr. O'Connor: May I inquire what position the solicitor of the Maritime Commission takes in this proceeding?

Examiner Robinson: As I recall, Mr. Page put himself on record at the pre-hearing conference. I would be glad to let Mr. Galland express himself.

Mr. O'Connor: I call on him to do so at this time so it will be on the record.

Mr. Galland: The solicitor's principal interest is to see that a sufficiently complete record is made in this proceeding. The solicitor's office may file a brief at the conclusion of the proceeding, but as the proceeding progresses it will appear in a neutral position.

Mr. O'Connor: May I inquire on whose behalf the solicitor appears?

Mr. Galland: The answer is as stated by Mr. Page on the record at the pre-hearing conference.

Mr. O'Connor: May we have it restated on this record here?

[fol. 437] Mr. Galland: The solicitor's office appears as the representative of the Commission, and will participate solely in the public aspects of this proceeding, and whatever is done by the solicitor's office will be done on the record, or by way of briefs, submitted and served upon all parties. The solicitor's office have no part off the record in conferring with the Commission in a decision of the case after the proceeding is concluded.

Mr. O'Connor: We desire to note on the record our formal objection to attorneys appearing here on behalf of the Commission which is the tribunal which is going to decide the issues in this matter in the first instance.

Examiner Robinson: Are there any further statements?

Before we get started, I wish to state the issues as I understand them, and if I am incorrect you will correct me.

Mr. O'Connor, it is your position, and your complaint is as to the lawfulness of the agreements themselves, or any part of them, which permits the contract-no-contract section, is that correct?

Mr. O'Connor: Substantially.

Examiner Robinson: On behalf of the Department of Justice, Mr. McDowell, as I read your petition to intervene, your objection is principally, as I take it, to the [fol. 438] contract itself, rather than the right of the agreement allowing the conference to enter into those contracts. Is that not right?

Mr. McDowell: No, We object to both.

Examiner Robinson: Do you think the petition is broad enough to cover that?

Mr. McDowell: I think so. Our position in that respect is that we regard the practice which would be set in motion by the agreement of the conference to employ the contract rate system as violating Section 14 of the Shipping Act, for that reason we don't think the Commission can approve it under Section 15 of the Shipping Act. So our objection goes to the consequences of the system as practiced, and to the attempt to have the authorized, or the purported authorization of the system.

I would like to add another word, if I may, to clarify our position.

Examiner Robinson: Yes. I would be glad to have you to do so.

Mr. McDowell: I think there was some misapprehension expected at the pre-hearing conference as to whether or not our participation might unduly prolong the issues, or whether we might lead the matter into an anti-trust proceeding of some sort, and I want to make it perfectly clear that, of course, we are here under the Shipping Act. We [fol. 439] are not here under the Sherman Act. The De-

partment of Justice is not in any way attempting to maintain in this proceeding that the question of the violation of the Sherman Act is presented, or that this is an appropriate form or determination of any such question.

The Maritime Commission, of course, administers and construes and applies the Shipping Act. We do say, however, and I do think this will help to clarify our position, that the case does arise out of what we might term the anti-trust provisions of the Shipping Act, since frequently it has been mentioned by the Supreme Court that the basic trade policy, the economic-political policy of our country against monopolies and restraint, which is commonly referred to as the anti-trust policies, are not involved solely and exclusively in the Sherman Act, but is embodied in a large number of statutes and in most regulatory statutes, such as the Agricultural Act, the Communications Act, the Interstate Commerce Act, and the Shipping Act, we think, contains provisions which are among the ones which the Supreme Court has commonly referred to as being part of the Anti-Trust Policy and included in the generic term of Anti-Trust Laws.

[fol. 440] I say that in order to make it clear that we regard the question as to the violation of Section 14, such as is expressed here, as raising in a very particular sense what is really an anti-trust question, although not an anti-trust question arising under the Sherman Act.

Examiner Robinson: But within the sphere of the anti-trust policy?

Mr. McDowell: That is right. Our view is this, and I think this is supported by the analysis which the Supreme Court has given of the Shipping Act.

In Section 14 of the Shipping Act The Congress has singled out specifically those types of conduct which would in trade generally lead to violations, and constitute violations of the Sherman Act, but they have been specifically prohibited in Section 14 of the Shipping Act, and for the guidance, we think, of the Maritime Commission in the enforcement of that Act.

Now, I think it should also be made clear, so that there can be no confusion, the Department of Justice is not in any way challenging the Conference System as such. We,

of course, recognize the Shipping Act specifically provides for Conference Agreements, and provides immunity for the authorized conduct, that is, the conduct authorized under Conference Agreements, to the extent they are validly approved by the Maritime Commission.

[fol. 441] So there is no question, as we see it in this proceeding, of the validity and legality of the Conference System as such, nor of the immunity enjoyed by the parties to this proceeding operating under the Conference Agreement to the extent that it is validly authorized and approved by the Maritime Commission.

Our objection goes solely to this exclusive patronage, or contract-no-contract system reported to be authorized and sought to be practiced by the members of the Conferences involved in this proceeding.

We think that that practice is specifically prohibited by Section 14, and not approved by Section 15. We want to make our views known to the Commission now, and insist on the determination of this question at this stage. We think that the practice on its face produces the type of discrimination and illegality specifically prohibited in Section 14 of the Act, as indicated by the Supreme Court decision in Swaine versus Hoyt, in which it was held that the contract rate practice was prima facie discriminatory.

I hope that fully explains our position.

Examiner Robinson: Yes. I am happy you made the statement, and I think it clears up some of the indecisions in my own mind, at least.

Before we proceed, has anyone else come in who would like to intervene?

(No response.)

[fol. 442] If not, Mr. Hupper do you wish to make a statement?

Statements of Counsel

Mr. Hupper: The respondent carriers take the position that the Department of Justice has no standing to appear or act in this case. They object to the same and protest against it, as not being authorized by any law, not being contemplated by the Shipping Act, particularly as representatives of the Maritime Commission are charged with

the administration of the Shipping Act, charged specifically with the avoiding of discriminations, and correcting them, that being the function of those who administer the Shipping Act, not of those who administer other statutes.

I put that position on the record without any detailed argument now. That will come later. Naturally, I am much interested in what Mr. McDowell has said, but I respectfully suggest he has no position in this case.

When he said he was here under the Shipping Act, I was unable to understand the point, in view of the expressed provisions of the Act, and the duties of the Maritime Commission under that Act, which is not a function of the Executive Department.

I think it is highly important to avoid conflicts between different branches of the Government. If the Department of Justice is permitted here to oppose the position taken by the Maritime Commission, or attempt to direct the deci- [fol. 443] sion that shall be made in this case, by virtue of the Maritime Commission's authority, then, we have one Department of the Government opposing another Department.

I respectfully suggest this case should not be made a sort of a circus, and I say that in moderation, in respect to a matter that concerns two sets of carriers, the complainant, Isbrandtsen Steamship Company on the one side, and the respondent carriers of the Conference Members, on the other side.

I suggest that we are here in the interest of the maritime commerce of the United States, which is a very large matter. We are not here with respect to controversies that the Department of Justice thinks may exist or may be engendered as between carriers who are focusing their attention on certain rate practices, which, to my mind, has nothing whatever to do with either Section 15 or Section 14 of the Shipping Act.

I therefore press by objection and protest on the record, that this proceeding be confined to the Isbrandtsen Company, on the one side, and these carrier respondent members of the Conference, on the other.

Examiner Robinson: Mr. Hupper, whatever my feelings might be normally, I am bound at this time by the fact that

the Commission has already allowed the Department of Justice to come in.

[fol. 444] Mr. Hupper: Of course, you take the record as you find it, Mr. Examiner, and I make a record, too, as may seem appropriate.

Examiner Robinson: Are there any other suggestions or statements?

Mr. O'Connor: Mr. Examiner, I believe, especially in view of Mr. Hupper's preliminary fabrications of the record, that it might be well for the complainant to set forth the background of this proceeding; in other words, just how we happened to be here.

It is well known in the foreign steamship trade that the Isbrandtsen Company is an independent. That means it does not belong to any Conference. That it is the largest American independent, and practically the only American Independent which does not belong to Conferences.

Examiner Robinson: Mr. O'Connor, I don't like to have you feel I am trying to shut you off, but I am wondering if what you are saying isn't a matter of evidence rather than a lawyer's statement.

Mr. O'Connor: May I state what may appear here along that line?

It is practically the only real independent in the world. Just at this moment it is operating 55 ships, as will appear in the evidence.

It is also well known in the trade that going back, say, [fol. 445] two decades ago, that the Isbrandtsen Company has openly and publicly complained against some practices of this Conference System, which we refer to as the exclusive patronage contract rate system, and which the Conferences themselves and the Maritime Commission prefer to refer to as the contract-no-contract system, that being the language contained in these two Conference Agreements which are primarily involved in this proceeding.

The position of the complainant herein has, in effect, been directed by the United States District Court for the Southern District of New York, presided over by three judges, that we go before the United States Maritime Commission and challenge the authority of the Commission to authorize the use of the contract-no-contract system, as we claim

they did, by approving the two Conference Agreements in question.

It is our contention that the power of the Commission to authorize such agreements is contained in Section 15 of the Shipping Act. That the Commission has no authority whatsoever to authorize what is a violation of the Shipping Act, such as we contend these two Conference Agreements are, under Section 14 of the Shipping Act, and more particularly sub-division 3 of that Act, for the ground that such a system of exclusion patronage contract rates discriminates and also retaliates against the shipper who may [fol. 446] patronize an independent, such as the Isbrandtsen Company, all of which is forbidden and made a crime under Section 16 of the Shipping Act. Under that, we rely on the holding of the United States Supreme Court in the Swaine vs. Hoyt case, and the language of the Commission itself in the contract regulating cases.

There will be offered here in evidence the form of shipping contract which these two Conferences use, and which they offer to the shippers in the North Atlantic trade during the year 1948 up to the time the Isbrandtsen Company obtained an injunction in the United States District Court.

I want to make it clear at the outset that following the statement made by Mr. McDowell for the Department of Justice, and notwithstanding any statements to the contrary which have been mouthed for years around here and elsewhere, the Isbrandtsen Company has never opposed the Conference System as such. It has opposed certain practices of the Conference System, particularly this exclusive patronage contract rate system which invites, or influences, or seduces the shipper to sign up for a year at least to transport all his cargo on the ships of the member lines of the Conference, in consideration of which he gets a certain rate, called the contract rate. If he does not sign up, he is compelled to pay for the same service 20 per cent or higher non-contract rate. And if, after signing, he patronizes a [fol. 447] non-conference member, or Isbrandtsen, he subjects himself to certain penalties and cancellation of his contract, the imposition of the higher rate, and more severe penalties than what the North Atlantic Continental Freight Conference set up. He must then pay to the Conference twice the amount for freight which he would have paid the

Conference if he had transported his cargo on a Conference ship rather than on Isbrandtsen or an independent ship. That could, without too far a stretch of the imagination, amount to a fine of hundreds of thousands of dollars on a shipper, which might put him out of business.

It is that practice, that feature of an international cartel which is unknown to America, which we challenge here.

For years the Isbrandtsen Company protested to the Maritime Commission without any results whatsoever except a form letter to file a formal complaint. Docket 648, which involved the Pacific Coast-European Conference—Isbrandtsen was not an operator in that trade, and so it could not participate as a party, or appeal from the decision of the Maritime Commission there, which held the contract system in some respects is lawful.

Following that, the Isbrandtsen Company was likewise helpless to attack the contract system from any anti-trust monopoly angle, although that is the basis of the point [fol. 448] involved, it creates a monopoly and drives out an independent, and keeps the independent from entering the trade. It monopolizes the trade in favor of combines which represent four American lines and eight foreign lines, and under the Conference System they vote by majority vote, so the foreign lines determine entirely what shall happen in that Conference.

Examiner Robinson: You are speaking in the abstract?

Mr. O'Connor: I am speaking from the record.

Examiner Robinson: You have nothing to speak from to show they do do that? You are speaking of the possibility?

Mr. O'Connor: I credit most people with using the power which they hold in their hands.

Examiner Robinson: The point I am making is that you have nothing definite to say on that?

Mr. O'Connor: I know they vote by majority under their Conference setup, so when, in the summer of 1948, they determined to re-apply, or re-employ the contract system in the North Atlantic trade, it must merely have resulted from some action, and I am quite sure the majority of the Conference did not vote against it.

I am also quite sure if the four American lines voted against it, the eight foreign lines could install the contract

system in that case, irrespective of the American lines.

Mr. Hupper: Mr. O'Connor, would you permit an inter-
[fol. 449] polation here?

Mr. O'Connor: Yes.

Mr. Hupper: The Conference provides for unanimous voting, and I am in a position to say that provisions of the Conference Agreements have been respected in respect of this particular matter.

Examiner Robinson: I think that will have to come in the evidence.

Mr. O'Connor: It recently may have, just a few days ago. I am talking back in the summer of 1948.

Mr. Galland: I think he ought to go into the record as to this history.

Examiner Robinson: I am not taking it formally. I am letting the parties speak their piece. Normally, I think it is far afield, but I think due to the inherent importance of the case, I think we should sharpen the issues as much as possible and limit it to personal statements.

But I assure you, I think I can separate the wheat from the chaff.

Mr. Galland: That is sometimes hard to do, and I have in recent cases come upon incidents where material was offered by way of a statement rather than as evidence, and it has gone along so far and covered so much of the record, that people briefing the case have, by mistake, taken material out of such statements and used them as evidence as a
[fol. 450] basis of argument in brief, and it does make some uncertainty.

Examiner Robinson: I agree it is a dangerous policy, and I don't normally do it, but I will let Mr. O'Connor continue.

Mr. O'Connor: I am sure the Examiner knows I am not testifying, that I am making an opening statement to lay the background for this proceeding. As I recall, it has been done in others, and we didn't just happen in here this morning without some background.

Mr. Hupper: I think you would make a good witness.

Mr. O'Connor: I am quite sure I would.

Following the bringing of the anti-trust section by the United States Government through its Department of Justice in the Far East case, the Isbrandtsen Company then

was faced with a situation where it could attack the use of this system when the two Conferences involved announced to the trade that they would install the system again, or completely, or whatnot, as of November 1, 1948.

We find ourselves before the United States Maritime Commission because when, in October, the Isbrandtsen Company applied to the United States District Court to enjoin the Conferences and the members from using this system in the North Atlantic trade, that Court granted an [fol. 451] injunction, which was temporary. Then, in January, the Court granted a preliminary injunction, which is still in full force and effect. And in its order granting that injunction, it did so on condition that the Isbrandtsen Company would prosecute a proceeding before the Maritime Commission challenging the validity of these Conference contracts which purported to approve illegally, as we contend, the use of the contract-no-contract system.

As we have heretofore contended, we believe solely questions of law are involved, and despite the Maritime Commission's denial of our petition to expedite this program by a hearing before the full Commission on this question of law, we still take that position, and the complainant here as its formal or prima facie proof which it considers its burden in going forward herein, will present and offer in evidence the documentary proof upon which we contend the case rests.

Examiner Robinson: For the benefit of any people who were not in Washington at the prehearing conference, there was an agreement, as I recall it, subject to being corrected by these gentlemen, that the various papers, documents on file with the Commission involving the conference could be referred to without putting them in evidence.

Is that right, Mr. O'Connor and Mr. Hupper? It might make it easier for you.

[fol. 452] Mr. O'Connor: Well, either way is all right, if, after referring to the document, it would be considered in evidence.

Examiner Robinson: Sometimes it is easier to put them in, because they are then all in one place. If you have them——

Mr. O'Connor: Well, we have them, and the record which

has been built up from this particular hearing, so we are prepared to offer them seriatum.

Examiner Robinson: That is fine.

Mr. Galland: If there is anything else, perhaps it could be covered by stipulation.

Offers in Evidence

Mr. O'Connor: We first offer in evidence the complaint in the Civil Action No. 47-749, of Isbrandtsen Company, Inc., plaintiff, against the United States of America, North Atlantic Continental Freight Conference, the Continental North Atlantic Westbound Freight Conference, and the 13 member lines of those two Conferences.

Examiner Robinson: What did you say it was?

Mr. O'Connor: A complaint in the United States District Court.

Examiner Robinson: That is already in evidence. We consider that the documents and pleadings, unless you expressly want to do it——

Mr. Hupper: You are talking now about the Court [fol. 453] proceedings?

Mr. O'Connor: Yes.

Examiner Robinson: Excuse me.

Mr. Hupper: I object to that. It is no part of the record in this case.

Mr. O'Connor: I have finished the description. Of those 13 member lines, the Lykes Bros. Steamship Company is no longer a defendant.

I offer this complaint for the reasons of expediency. The complaint is referred to in the complaint in Docket No. 864, and admitted in the answer of the respondent therein.

But annexed to this complaint of the United States District Court are the documents which go to make up the documents upon which the complainant relies herein as proving its case.

So I think the expeditious way would be to put in evidence this complaint in the United States District Court, which it is agreed upon between the parties herein as having been filed, and the exhibits thereto attached.

I will note a comment on the different exhibits. For instance, the two Conference Agreements were attached,

and one of the shipper's agreements, and so forth. That is why I offer it first in that form.

Examiner Robinson: Do you object?

[fol. 454] Mr. Hupper: It does not seem to me that any documents in a Court proceeding, as such, is an appropriate document for this proceeding. After all, no evidence was taken in respect to the Court proceeding documents, and there are some things in those documents that would be described as attempts at evidence, anyway.

But I think this record ought not to contain purely legal matters; therefore, I object to it, to those documents.

Mr. Galland: Mr. Examiner, I think the receipt of this material is perfectly proper as evidence of the content of the various documents involved, but not as evidence that the statements and allegations contained in the document are true.

Mr. O'Connor: There is no question about that.

Mr. Hupper: It is apparent on their face they are purely self-serving.

Examiner Robinson: Are there any other comments?

I will admit it as Exhibit 1.

(Document referred to was marked Exhibit No. 1 and received in evidence.)

Mr. Galland: Mr. Examiner, do you attach to your ruling admitting it the proviso that they are admitted as evidence of what the documents contain, and not as evidence that the statements in the documents are true?

[fol. 455] Examiner Robinson: Oh, yes. That is my understanding. They don't prove anything at all, except——

Mr. McGovern: Is this Exhibit 1 for the complainant, or will the exhibits be numbered consecutively?

Examiner Robinson: Yes, we will number them from 1 on up.

Mr. O'Connor: We call attention to the following papers annexed to that complaint:

First, Exhibit A, page 1, being the order of the United States Maritime Commission of January 2, 1948, approving several Conference Agreements—4490-6 and 7770-1, 4490-A and 7770-A.

That is one of the orders which is challenged by this

complainant herein. It approves a Conference Agreement containing the language "contract" "non-contract rates."

It is my suggestion that that order be marked separately now as an exhibit.

Examiner Robinson. Well, I don't think that would be necessary, Mr. O'Connor. Everything is in there.

Mr. O'Connor: There are lots of others.

Examiner Robinson: I think it is just as easy to refer to Exhibit A, or page 1, whatever you are talking about. If we get an exhibit within an exhibit it is going to be confusing.

[fol. 456] Mr. Galland: We could go through and mark it A, B, C, and so forth.

Mr. O'Connor: I think that would be very helpful later.

Examiner Robinson: All right.

Mr. O'Connor: May the order of the Commission dated January 2, 1948 be considered as Exhibit 1-A.

Examiner Robinson: Yes; Exhibit 1-A.

(The above mentioned order was marked Exhibit 1-A and received in evidence.)

Mr. O'Connor: Exhibit A, page 2 of the complaint in the United States District Court is a copy of a Conference Agreement 4490-6, dated July 1, 1947, which the previous order approves. I suggest that that be marked Exhibit 1-B.

Examiner Robinson: That will be Exhibit 1-B.

(The above mentioned agreement was marked Exhibit 1-B and received in evidence.)

Mr. O'Connor: Exhibit A, pages 3 to 8, inclusive, contain a copy of the basic Conference Agreement No. 4490, as amended to January 2, 1948.

I suggest that that be marked Exhibit 1-C.

Mr. McGovern: I suggest a correction. That basic agreement is pages 3 to 6, inclusive. Pages 7 and 8 relate to No. 4490-A.

[fol. 457] Mr. O'Connor: Yes.

Examiner Robinson: You wish to change that?

Mr. O'Connor: Yes.

Examiner Robinson: That will be Exhibit 1-C, pages 3 to 6, inclusive.

Mr. O'Connor: Yes.

(Basic Conference Agreement referred to, pages 3 to 6, inclusive, marked Exhibit 1-C and received in evidence.)

Mr. O'Connor: Exhibit A, pages 7 and 8 of the Court complaint, is a copy of the Conference Agreement No. 4490-A, which I suggest be marked Exhibit 1-D.

Examiner Robinson: That will be Exhibit 1-D.

(Documents marked pages 7 and 8, were marked Exhibit 1-D and received in evidence.)

Mr. O'Connor: Exhibit B, pages 1, 2, 3 and 4 of the Court complaint, is the Conference Agreement No. 7000.

Mr. McGovern: That should be pages 1, 2 and 3.

Mr. O'Connor: Yes, that is right.

That will be Exhibit 1-E.

(Pages 1, 2 and 3, above referred to were marked Exhibit 1-E in evidence.)

Mr. O'Connor: Exhibit B, page 4, is Agreement No. 7000-5. That will be Exhibit 1-F.

(Page 4 of Exhibit B referred to was marked Exhibit 1-F and received in evidence.)

[fol. 458] Mr. O'Connor: Exhibit C of the Court complaint, pages 1 and 2, is a copy of Conference Agreement No. 7920-1, one of the Conference Agreements primarily in issue in this case.

Examiner Robinson: You want that marked?

Mr. O'Connor: First I might say in respect to that, that as far as we can find there was no order of the Maritime Commission approving this Conference Agreement, and the language therein of "Contract," "non-contract rates." But on the Conference Agreements themselves there was a stamp of approval which is used by the Conference Commission. That does not appear in this record here, but we have a certified copy of that agreement as it was approved by the Commission, which I would be glad to offer if there is any question that this No. 7920-1 was approved.

Mr. Galland: What was the date of the approval as indicated on your certified copy?

Mr. O'Connor: August 24, 1948.

Mr. Galland: Can we stipulate, Mr. Hupper, that this agreement was approved by the Maritime Commission on August 24, 1948?

Mr. Hupper: What are you referring to now?

Mr. Galland: I refer to the exhibit which is about to be marked 1-G.

Mr. Hupper: Is that marked as an exhibit?

[fol. 459] Examiner Robinson: It is going to be 1-G.

Mr. Galland: What I am asking is whether we can stipulate that this agreement was approved August 24, 1948?

Mr. Hupper: Correct.

(Documents above referred to were marked Exhibit 1-G and received in evidence.)

Mr. O'Connor: Exhibit C, pages 3 and 4 of the Court complaint contain Conference Agreement No. 7920.

Examiner Robinson: That will be Exhibit 1-H.

(Pages 3 and 4 of Exhibit C referred to were marked Exhibit 1-H and received in evidence.)

Mr. O'Connor: Exhibit D, page 1 of the Court complaint, is a copy of a letter dated October 1, 1948, from C. R. Andrews, as Chairman of the four Conference, including the North Atlantic Continental Freight Conferences to merchant shippers, in reference to the application of the contract system in that trade as of November 1, 1948.

Examiner Robinson: That will be marked Exhibit 1-i.

(Copy of letter referred to was marked Exhibit 1-i, and received in evidence.)

Mr. O'Connor: Exhibit D, pages 2, 3, and 4 of the Court complaint, set forth the form of shippers' contract used, or proposed to be used, beginning with November 1, 1948, by [fol. 460] the North Atlantic Continental Freight Conference.

I suggest that that be marked 1-J.

Examiner Robinson: That will be Exhibit 1-J.

(Exhibit D, pages 2, 3 and 4, above referred to was marked Exhibit 1-J and received in evidence.)

Mr. O'Connor: Exhibit E, page 1, of the Court complaint, is a notice to exporters and forwarding agents in the North

Atlantic trade, dated September 28, 1948, headed "Black Diamond Lines," and signed by their agent, setting forth that the contract system will be applied in the Westbound trade as of November 1, 1948, or about then.

I ask that that be marked Exhibit 1-K.

(Exhibit E, page 1, referred to was marked Exhibit 1-K and received in evidence.)

Mr. O'Connor: I also offer in evidence the formal agreement used, or proposed to be used, on the Westbound North Atlantic trade by the Continental North Atlantic Westbound Freight Conference, for the purpose of shippers signing up to give their exclusive trade to the Conference.

Mr. Galland: It is a shipper's contract?

Mr. O'Connor: Yes.

Mr. Hupper: With respect to that, Mr. O'Connor and I have not yet compared the form he has in hand and the form I have in hand.

Mr. O'Connor: The form I sent you is the form I [fol. 461] obtained from the files of the Maritime Commission.

Mr. Hupper: You sent me one, did you?

Mr. O'Connor: Yes, I sent you one on Friday by hand, Friday noon, and I asked you if you would agree that was the form. I obtained it from the Maritime Commission attached to the clerical schedule.

Mr. Hupper: I have no doubt it is, and although I haven't yet compared it, I will do so and confirm it.

Examiner Robinson: Why not put it in as Exhibit 2, subject to any corrections that you might wish to make. Is there any objection to it?

There being no objection, that will be Exhibit 2.

(Document above referred to was marked Exhibit No. 2 and received in evidence.)

Examiner Robinson: We will have a five minute recess.

(A short recess was taken.)

[fol. 462] Examiner Robinson: All right, Mr. O'Connor.

Mr. Galland: Mr. Examiner, the agreements included in Exhibit 1 and which have been marked by letter as subexhibits represent the current or currently effective amendments of agreements, some of which were filed in somewhat different form some time ago, and I think it would be proper if we were to stipulate that there may be considered as a part of the record the entire chain of agreements leading up to the agreements as set forth in Exhibit 1.

I have in mind particularly Agreement 4490 approved August 24, 1935, Agreement 7000 approved February 16, 1940, Agreement 7920 approved July 1, 1947.

I would like to have the parties stipulate to those agreements as originally filed, including all amendments down to the dates of the agreements included in Exhibit 1-B, considered as a part of the record.

Examiner Robinson: Are there any objections?

Mr. O'Connor: I thought we had the basic 4490 and the basic 7000, and the basic 7920 in the agreement.

Mr. Galland: Well, possibly so. It isn't clear to me whether we have included everything. For the sake of safety I offer this stipulation.

Mr. O'Connor: Well, of course, we have got 4490, that is Exhibit 1-C, we have 7000, that is Exhibit 1-F, and we have Exhibit 7920, that is Exhibit 1-H. Those are the three [fol. 463] you are talking about.

Mr. Galland: Well, there may be a chain of amendments to all of those agreements. I think everything pertaining to the agreements that has ever been approved by the Commission should be understood as being included in this record. I don't specifically know what intervening material there may be. I don't see that the stipulation could result in any harm.

Mr. Cockrum: Mr. Examiner, I was wondering if that isn't a very indefinite way of leaving the matter, that is, what may or what may not be stipulated into the record. Where are these amendments, possible amendments you are speaking of?

Mr. Galland: Well, they are all unofficially on file with the Maritime Commission. If they are not stipulated into the record, I will ask that the Commission note them officially as being public records, but I think simply for the

sake of definiteness as to what is included here, it would be better if we agree to this stipulation. I don't know what they say myself.

Examiner Robinson: It would seem to be helpful, to get a complete picture.

Mr. Cockrum: I am just wondering if it couldn't be more definitely confined, Mr. Examiner.

[fol. 464] Examiner Robinson: Well, he has given the numbers and what sheets would be included.

Mr. Galland: I have no copies here, and I am quite sure, Mr. Cockrum, nobody wants me to read them here. They are all agreements in the chain of agreements leading up to those that Mr. O'Connor has offered. And I think the complete story on each group of agreements or each agreement with its amendments filed by each of the conferences ought to be part of our record here.

Mr. O'Connor: Now, let me see if I get what you are after. First 4490, for instance, that basic agreement is on file. We also have 4490-6; that is in here. That is 1-B. Now, do you mean you want to put in 4490-1-2-3-4 and 5?

Mr. Galland: That is the idea.

Mr. O'Connor: We will have no objections to that except that we don't know of their materiality.

Mr. Galland: I don't either.

Examiner Robinson: I don't either.

Mr. O'Connor: Now, and to 7000, we have that basic agreement in here, and apparently there are no amendments to that.

Examiner Robinson: Well, you have already referred to 1-F as 7000-5.

Mr. O'Connor: I am sorry, 7000-5. Now, it is your sug-

[fol. 465] gestion that 7000-1-2-3 and 4 be put in there?

Mr. Galland: That's right.

Mr. McGovern: May I suggest, Mr. Examiner, to clarify our thinking, that I ask Mr. Galland to turn, for example, to our Exhibit 7000. That is 1-E, Exhibit B, each one of the complaints. You will notice on the first page that reads, "Copy of U. S. Maritime Commission Agreement No. 7000."

Mr. Galland: That is right.

Mr. McGovern: That is the current copy which you are supplied by the Commission. Now, you turn over to the

next page. You will notice the footnotes on there reflect, I think, all the changes included in the intervening agreements, 1, 2, 3, and so forth. For example, you will note Article VIII was added by Agreement 7000-2. Well, Article VIII is in this form.

Examiner Robinson: Well, you won't harm yourself by agreeing to the stipulation.

Mr. McGovern: I quite agree. The only question I raise, Mr. Examiner, is whether the copies do not include a statement by the Commission that the basic agreements plus all the amendments must be included.

Mr. Galland: I think maybe when we piece all this together we will have all we need right there. They are in this exhibit. I haven't made this suggestion for the pur-
[fol. 466] pose of prejudicing anybody in any way. It may simply be found that there are gaps, and I think we ought to be privileged to fill them in.

Mr. O'Connor: Let me complete what I was calling attention to, ——7920, that basic agreement is in, in 7920-1 is in. That is the agreement concerning which we complained, so that that series is complete under your suggestion, is that right?

Mr. Galland: I think it is, yes, as far as I know.

Examiner Robinson: Well, would there be any objection—all you are interested in, as I see it, is just assuring that all the phases of the basic agreements of force are in.

Mr. O'Connor: Brought up to the last number here.

Examiner Robinson: That's right.

Mr. McGovern: Could we add this amendment to Mr. Galland's stipulation, Mr. Examiner, that is, that if any other agreement is found by any other parties to be material to the issues here, that it be tendered as they hear of it and that the parties should have copies of it, and it could be included as part of the physical record presented in this hearing.

Mr. Galland: That is entirely satisfactory to me.

[fol. 467] Examiner Robinson: How do you other gentlemen feel about this stipulation?

Mr. Hupper: I think the complete conference record should be in, Mr. Galland, for this stipulation, and with the further proviso that Mr. McGovern suggested, that is, if

anything else is found to be material that we will consent to have it considered as part of the record, anything else relating to these agreements on file. I take it that is what you meant.

Mr. McGovern: That is right, just the physical incorporation so that we have one integrated record that reflects off the material.

Examiner Robinson: Well, let the record show that there has been an agreement among the parties to the stipulation suggested by Mr. Galland. As a matter of fact, I think the stipulation which was made in Washington would probably cover the whole thing.

Mr. Hupper: I have an idea there are some omissions there that may be material.

Mr. Galland: Go ahead. Excuse the interruption, Mr. O'Connor.

Mr. O'Connor: That is all right.

Complainant Isbrandtsen offers in evidence four facts copied from the files of the U. S. Maritime Commission headed: North Atlantic Continental Freight Conference [fol. 468] (agreement No. 4490), Schedule of Rates and Tariff Rules, Number 18, with a footnote on the first page, "Correction No. 488, issued October 1, 1948."

Page A, "Correction No. 489, issued October 1, 1948."

Page A-1, "Correction No. 490, issued October 1, 1948."

On the last page, "Correction No. 491, issued October 1, 1948"—showing the changes in the tariff schedules on file by that North Atlantic Freight Conference, showing the conference and non-conference rates effective as of November 1, 1948 as indicated.

Examiner Robinson: Is there any objection to this exhibit?

Mr. Hupper: This came from the files of the Commission, Mr. O'Connor?

Mr. O'Connor: Yes, it did.

Examiner Robinson: That is always subject to correction. Is there any objection from anyone?

(No response.)

It will be marked Exhibit 3 as a unit.

(The document above referred to was marked Exhibit No. 3 and received in evidence.)

[fol. 469] Mr. O'Connor: The complainant offers in evidence four sheets obtained from the files of the U. S. Maritime Commission pertaining to the "Continental North Atlantic Westbound Freight Conference," headed "Tariff 2 for Westbound Cargo," with the footnote, "Effective August 15, 1947," being the last correction to the tariff schedules of that conference and its member lines, and showing the contract and non-contract rates as indicated therein.

Examiner Robinson: Is there any objection?

Mr. Hupper: That comes from the same source, I take it?

Mr. O'Connor: It does.

Mr. Hupper: No objection, subject to the same terms as previously.

Examiner Robinson: Subject to the same terms. Is there any objection at the other end of the table?

(No response.)

Examiner Robinson: It will be marked Exhibit 4 as a unit.

(The document above referred to was marked Exhibit No. 4 and received in evidence.)

Mr. O'Connor: The complainant now submits that the documentary evidence proves by itself that the conferences proposed to charge higher rates to shippers who refuse to sign the contract leaves an eye on the authorities in the [fol. 470] cases of the contract routing instructions in the Supreme Court of the United States in Swain & Hoyt, which held that such conferences are prima facie proof of discrimination and retaliation. So that these documents again support any allegation we may have of going forward, and sustain our case that on the record it is these conferences and their member lines that are practicing illegally in violation of the Shipping Laws.

At this point we rest. We reserve the right, however, without prejudice at any time, in the position we have taken to call witnesses in rebuttal of any testimony which may be offered by the respondents herein or other parties.

The complainant now rests.

Examiner Robinson: Mr. Hupper.

Statement by Mr. Hupper

Mr. Hupper: Of course, Mr. O'Connor has the right to rest, I assume, just as he had the right not to proceed at all. As I understand the order of the Court, an adversary proceeding was directed by Messrs. Isbrandtsen. I must say that if Messrs. Isbrandtsen rests at this point, it is the position of respondent that an adversary proceeding hasn't been conducted by them. These various documents that have been marked in evidence are mere pieces of paper and establish nothing beyond what has been commonly known for a long period in shipping circles.

[fol. 471] I am willing with due reservation to put witnesses on if Mr. O'Connor sticks to the observation he has just made, that he rests. But I do give him notice on behalf of the respondents if he seeks by way of rebuttal, as he chooses to describe it, to bring forth matters which appear to me to be properly part of complainant's direct case in an adversary proceeding, I shall then be bound to request the Examiner to exclude all such efforts.

[fol. 472] In a matter of this kind complainant had a duty not only to the Maritime Commission, but to the Courts, as I see it. He can change his own affairs as he wishes, but I want it clearly understood that the respondents do regard this as an adversary proceeding in an effort to maintain, and perhaps improve, conditions in the Maritime commerce of the United States.

Since the complainant has initiated the proceeding both in Court and is now here pursuant to the order of the Court before the Maritime Commission, the duty that rests on the complainant is very considerable indeed to lay on the record as a complaint the matters to which he objects in the current contract situation in addition to letters and figures that are in the record only as pieces of paper.

I understand, Mr. O'Connor, you have rested and don't intend to put any witnesses on now?

Mr. O'Connor: As I stated, at this time we think we have met any requirement of an adversary proceeding, if that is correctly known — we have offered documentary proof here that these Conferences and these respondents are violating the law, the criminal law, by the use of these

papers submitted in evidence and are filed with the Commission by their announcement to the trade and otherwise.

We do not believe that there are any facts which can [fol. 473] change that picture or alleviate it .....

Now, if it is the purpose of .... attempt to go into facts and call shipp .... operators to extoll the beneficences of the co .... system, and so forth, we proopsed, after examining th critically as we can, to find out if we know what they are talking about, to offer proof possibly of what the trade really thinks about the system, without prejudices to our contention that it is solely a legal case.

That is why we entitled it such in our complaint, challenging the validity of these agreements as approved by the Commission, and challenging the authority of the Commission to approve them.

That is why we sought and obtained the injunction against all these respondents, to prevent them using an illegal instrument.

With those few observations, the complainant restates its position and rests.

Mr. Hupper: Mr. Examiner, I recall Mr. O'Connor, and surely the Examiner will also, that the opinion of the Courts indicated that factual matters needed to be looked into by the Maritime Commission.

I recall also that you, for the complainant, made a motion before the Maritime Commission to have the matter heard substantially, and you now suggest in a very limited way [fol. 474] as to a point of law only. You described them. The Commission made a ruling versus your motion to the effect that your case involved many facts and it was necessary to have a full hearing.

I deem it the duty of the complainant and his counsel to proceed in that sense, in the sense of a full examination of facts from the point of view of the complainant, and we will try to assist in cooperative cross-examination, and I request that the Examiner direct the complainant to proceed with its factual case, and as was determined by the Commission itself in denying complainant's motion and as it was contemplated by the Court in the decision in January last.

Examiner Robinson: Well, this is one case in which I don't intend to be technical. I am going to give everybody an opportunity to do what they can, but I certainly can't compel Mr. O'Connor to come forward with anything if he feels content to rest where he is—he will then just have to be satisfied with the result.

I, of course, am not expressing any opinion of what those results are going to be, but as far as the burden of proof and all is concerned, it is up to the parties. If they feel that they have sufficient, that is up to them; if they don't, they will just have to abide by the results.

Mr. O'Connor: Well, I cannot, of course, let Mr. Hupper's [fol. 475] construction of the order of the Court go unchallenged. As we interpret the order of the Court, it says nothing about the necessity of ascertaining any facts whatsoever. They directed us to take it to the Commission and challenge the validity of the agreement. That is what we are doing, and that is all we are doing.

I still think we are free to disagree with the holding of the Commission that there were facts, one or many, to find. Our position is that there are no facts obtainable, there are no findings of facts that can be built up after any amount of testimony that will offset this violation of the contract language of the law.

Examiner Robinson: I will make one observation, that I think it would be highly desirable that every scrap of testimony possible, or evidence, rather, be put in, as I anticipate that this will be a test case. I may be wrong, and I would hate to see this thing decided on a technical ground of procedure.

Mr. O'Connor: There is another practical angle to it, Mr. Examiner. We feel, also, that if we are compelled to meet this testimony of facts that we, without knowing whatever what is going to be offered, that we would be in a better position to rebut it.

Examiner Robinson: I wasn't casting any reflection on you; I am just speaking about everybody. I should think [fol.476] it would be to everybody's advantage to get the most possible in the case.

Mr. O'Connor: That may be the final result. Our position is, though, that we are not compelled to go forward at this time.

Examiner Robinson: No, I am not insinuating that at all.

Mr. Galland: Mr. Examiner, it seems to me that when the Commission denied the Isbrandtsen motion for expedited procedure, it determined, as Mr. Hupper says, that there were facts that it desired to ascertain before arriving at its decision in this case.

I think the Commission is entirely aware that this case will probably land in the Courts again, possibly in the Supreme Court, and the Solicitor's Office is here for the purpose of seeing to it that before this case gets back to the Courts, sufficient record will have been made so that the Commission and the Courts, too, will have a complete opportunity to understand—I don't know how the Conference System works, but how it works under arrangements which call for two sets of rates such as are here involved, with the lower rate going to the shipper who enters into exclusive patronage contracts. And I am not going to take any part in the production of evidence if the evidence is put in by the complainant and by the respondents, but if the record is not fully developed by them, I [fol. 477] shall want to call witnesses, and I shall ask for a sufficient amount of time in which to do that.

Mr. O'Connor: Mr. Examiner, may I say in connection with that, in the use of facts, we may be thinking entirely of facts produced by oral testimony.

There are a lot of facts set forth in the documents which are introduced in evidence. Those are facts from the written documents. We believe they speak for themselves without the necessity of any amplification from the facts that might fall from the mouths of witnesses testifying orally.

Mr. Galland: Well, I have no objection to the fact that the facts as submitted by Mr. O'Connor and Mr. McGovern are in writing, but the truth is that they have submitted very few of such facts which have not been matters of record at previous stages of this case, and I think that the Commission has determined that it wants a good many more of them than are before it now.

This is a complaint proceeding and, of course, effects the interests of the complainants and the respondents. The

Commission is a public body and it has a large measure of responsibility for the administration of the Conference System and there are tremendous questions of shipping economics here that I think ought to be fully explored.

[fol. 478] And I don't think that the System and its operation are capable of being understood on as much record as has been made up to this point.

Examiner Robinson: As Examiner, I can assure you, I am here to a certain extent to do the bidding of all the parties.

Now, it is up to you entirely. I drop it in your bosom.

Mr. Hupper: Just one word more, Mr. Examiner, if I may.

Mr. O'Connor speaks about facts. Let us for the moment agree with him. It is apparent that he has not yet put in this record anything that adds substance, and scarcely anything adds form to what was before the District Court which finally made its order directing the complainant to proceed before the Commission.

It is not for me to deprecate the dignity and power of the Commission on points of law that relate to its functions, but it is very hard for me to imagine that the District Court of the United States, having before it matters which Mr. O'Connor has said were purely of law, would refer those to the Maritime Commission for decision. He said it is only a point of law that is involved.

If I read the opinion of the District Court correctly, the clear implication therein is that the Commission must have [fol. 479] matters of fact before it in order to take due position on points of law that might develop from the hearing subject, of course, ultimately, if it should be appropriate for review, by an appropriate Court setup.

Now, in the second paragraph of the opinion of Judge Rifkind, it states that the Commission for 15 years has followed a procedure for reviewing, it says here, on its own motion in the Pacific Coast-European Conference Agreements, and for hearing complaints concerning agreements previously approved by it.

That procedure has not yet been availed of by the plaintiff. We should not at this stage pass on the validity of the agreements before the Commission until, in accordance with the established procedure, it has had an opportunity to pass

[fol. 480] thereon in an adversary proceeding. An adversary proceeding can mean nothing except one in which all relevant facts are spread on the record. Mr. O'Connor himself, I think, will recall his attendance or attendance of some of his associates, certainly attendance by somebody on behalf of Messrs. Isbrandtsen at the hearings, certainly on the argument of the Pacific Coast-European case, which was full of facts, Docket 648. And to suggest that this case can be tossed off without consideration of facts, merely the documents that have been put in, seems to me an absolute denial of the Commission's function.

Mr. O'Connor: Well, one way to test it would be, of course, to submit it to the Commission as it now stands, for you, Mr. Hupper, also to rest, and we will be glad to return to court and thresh it out.

Mr. Hupper: Well, I know the Commission has had it submitted and I think you filed a memorandum, and one was filed for the respondent, and the Commission said, "We want a full hearing. There are facts here to be dealt with," and that binds you as it does me.

Mr. O'Connor: No, we don't——

Mr. Hupper: I don't think you have to go back and ask the Commission to say over again what it already said.

Examiner Robinson: Gentlemen, I think we are getting nowhere exceptionally fast, and I appreciate the observa- [fol. 481] tions that you make. Now, it is up to you, I think you have either got to fish or cut bait.

Mr. Hupper: Have you any more to say, Mr. O'Connor?

Mr. O'Connor: No.

Mr. Hupper: I make a motion to dismiss this proceeding.

Examiner Robinson: I will just have to put it on the record, because I have no authority to do that.

Mr. Hupper: I don't know whether that is fishing or cutting bait.

Mr. McGovern: Perhaps, Mr. Examiner, courtesy requires we reciprocate Mr. Hupper's consideration in forewarning us he is going to object to our tendering on a possible redirect case any evidence that goes outside the scope of what we have tendered on our direct case. We contend now that we have made out a prima facie case. We assume, of course, that Mr. Hupper's case will be confined to rebut that prima facie case, but in the event that

the Examiner feels that Mr. Hupper, feels that Mr. Hupper should be entitled to go outside the scope of that prima facie case and adduce lines of testimony which we contend are immaterial and irrelevant to the issues tendered by us, why, obviously, we have to preserve until a later time a decision as to whether we will try to meet those irrelevant, and what we contend immaterial issues.

[fol. 482] Examiner Robinson: Of course, we will come to that when we get to it. Are you going to do anything, Mr. Hupper?

Mr. Hupper: I beg your pardon?

Examiner Robinson: Are you going to do anything factually?

Mr. Hupper: Well, I have made a motion. Is there a ruling on it?

Examiner Robinson: I said I have no right to dismiss any proceeding. The motion will appear on the record.

Mr. Hupper: You deny my motion?

Examiner Robinson: I can neither deny nor grant it. I have no inherent authority to act on it.

Mr. Hupper: Reserving all my rights, rights to respond in relation to dismissal of this Docket 684 or other action therein for the benefit of respondents, I file a protest against the failure of the complainant to proceed, and will proceed on behalf of the respondent without prejudice, and I call my first witness Mr. Hans Isbrandtsen.

Examiner Robinson: Mr. Isbrandtsen, will you come up here, please?

Hans Isbrandtsen, called as a witness on behalf of the respondents, after having first been duly sworn, was ex-
[fol. 483] amined and testified as follows:

Mr. Hupper: I note on the record that I am calling for the respondents Mr. Isbrandtsen, head of the complainant company, in this Docket 684, for the reason that I regard it as respondent's duty to the Maritime Commission in the carrying forward of this case that in view of complainant's counsel having declined to put fact witnesses on the stand. I state in so doing I reserve for the respondents all rights and privileges of every nature that appertain to the calling of a hostile witness.

Examiner Robinson: Is he under subpoena?

Mr. Hupper: No.

Mr. Isbrandsten, you came into this room voluntarily without request from me, did you not?

The Witness: That's right.

Mr. Hupper: In using the word "hostile," I mean nothing depreciatory. I know Mr. Isbrandtsen——

Mr. O'Connor: Just a moment, before you start your examination. We can't let it remain on the record, any such statement as that, if you can call a witness and not be bound by him. Mr. Isbrandsten is now your witness and we shall contend all along that you are bound by his testimony and that you cannot challenge him. The mere fact that you throw in the word "hostile" without first establishing the hostility—we submit to you it is elementary in [fol. 484] law that he is your witness, you are welcome to him, and you will be bound by the testimony he gives here, which I am sure——

[fol. 485] Examiner Robinson: Mr. O'Connor, it seems to —— I remember an exception to that general rule of evidence where you call a witness and he is the only one that you can prove anything by, you are not bound by his hostile testimony.

The Witness: Mr. Examiner, I would like to make one remark.

I just so happened I was engaged this morning and I had a free moment just to step in here and see what went on, and I didn't hear the early part of this proceeding, and if I have entered into a hostile atmosphere here, why, I am entirely unaware of it. And I am not in that mood.

Examiner Robinson: I can assure you there is no hostility. That is meant in a technical sense, someone who is called who is not your own witness.

The Witness: Well, I only know of one way of being hostile, and whether you call it technical or not, hostility to me means hostility, and I don't feel in a hostile mood; I just came in here, and I don't know what went on.

So if you would please, Mr. Hupper, dismiss that from your mind, that I have come in here with any notion of being hostile——

Examiner Robinson: Mr. Isbrandtsen, I can assure you

you will be fully protected, so you have nothing to worry about.

Mr. O'Connor: Mr. Examiner, this being a country boy's [fol. 486] lunch hour, could we adjourn at this time and meet at 1:30, so we can acquaint Mr. Isbrandtsen with what has gone on this morning about the introduction of these documents?

Examiner Robinson: I don't think that is necessary. I think, being a witness, he is entitled to call him if and when he chooses, and he has to take the burden of what he knows or doesn't know.

Mr. O'Connor: I am just talking about the fact that he just came into the room.

Examiner Robinson: I think you can go ahead.

Mr. Hupper: I might say I am a country boy, too, and if it suits Mr. Isbrandtsen and Mr. O'Connor better, I would agree to the suggestion. I know that Mr. Isbrandtsen hasn't been posted as to what was done this morning, and after all, he knows and I know that there can be no hostility in the personal sense between us.

The Witness: Not possibly.

Mr. Hupper: I know very well that his answers to questions will be straight answers. My calling him was forced on me, I think it is part of my duty for the respondents, and if Mr. O'Connor likes it better to have an opportunity to confer with Mr. Isbrandtsen, that suits me right down to the ground.

Examiner Robinson: Well, if there is no objection in that sense, all right.

[fol. 487] Mr. Hupper: I don't want to put him in the position of being unaware of what has happened.

Examiner Robinson: Suppose we adjourn until two o'clock.

(Whereupon, at 12:00 Noon, an adjournment was taken until 2:00 p.m.)

[fol. 488] AFTERNOON SESSION

2:00 P. M.

Examiner Robinson: Proceed.

HANS ISBRANDTSEN resumed the stand and testified as follows:

Direct examination.

By Mr. Hupper:

Q. Mr. Isbrandtsen, have you been in the shipping business a considerable period?

A. Yes, sir.

Q. About how many years?

A. Forty-five years.

Q. Forty-five?

A. Yes. Forty-four or forty-five.

Q. Where did you begin?

A. Denmark.

Q. When did you begin here in this country?

A. 1915.

Q. 13 or 15?

A. 1915.

Q. Are you the head of the complainant company, Isbrandtsen Company, Incorporated?

A. Yes, sir.

Q. That company is incorporated in New York, is it?

A. Yes, sir.

[fol. 489] You own all the stock or the majority of it?

A. The majority of it.

Q. So you have absolute control of the complainant company?

A. Yes.

Q. In that period from 1915 on, right up to now, have you kept yourself pretty well posted on the shipping affairs of this country?

A. I suppose so.

Q. Do you know anybody that is better posted, in your judgment?

A. Oh, yes.

Q. Many people?

A. Well, that question is in the abstract, Mr. Hupper.

Q. Pardon me?

A. That question is a little abstract.

Q. Abstract. Have you familiarized yourself with the conference system?

A. Yes.

Q. When did you begin to do that?

A. Oh, I should say I have been familiar with that system since—well, since very early—since—oh, certainly since after the first war.

Q. Say from 1918, you would put it?

A. Yes.

Q. And you made it a point, I suppose, to examine conference agreements from time to time?

[fol. 490] A. I think so, yes.

Q. You did that as a part of your becoming familiar with shipping affairs in this country, did you not?

A. That is right.

Q. How many ships do you own? I am talking about your company.

A. At this present time, eight.

Q. All American flagships?

A. Yes, sir.

Q. What type are they?

A. They are C type ships.

Q. C-2?

A. C-2's and C-1's.

Q. Half and half?

A. No. The C-2, 3, and the C-1, 5, or 4—the C-1's, 4.

Q. Do you operate all those ships in the trade covered by your complaint?

A. No.

Q. How many ships do you operate in that trade?

A. They vary in number.

Q. All owned ships, are they?

A. No, not all owned ships. Sometimes chartered ships.

Q. Chartered from the Maritime Commission?

A. No. Chartered from private people.

Q. American shipowners?

[fol. 491] A. Mostly.

Q. Some foreign?

A. Occasionally.

Q. Have you examined the conference agreements covering these two conferences that are involved in this proceeding here?

A. I have looked at them.

Q. When did you do that? Back in the 30's?

A. You mean the present one?

Q. Yes.

A. The present one that is in question now?

Q. Yes.

A. Well, that would naturally not be in the thirty. That only came in to us here a short time ago.

Q. Don't you remember that the basic agreement 4490 of the North Atlantic Continental Freight Conference Eastbound was made and approved in August, 1935?

A. I don't keep track of those numbers and designations.

Q. Well, if you could assume that to be a correct statement, would you be willing to say that you examined that conference agreement in 1935?

A. Why should I assume that?

Q. Well, you don't recall whether you examined that agreement in 1935, or some time in the thirties, or not, do you?

A. No.

Q. You wouldn't say you didn't, would you?

[fol. 492] A. I am looking at currently all the documents that are pertinent to our trade.

Q. And you have been doing that a good many years?

A. I am not the only man in my concern, in our concern, rather. We are sort of dividing up our duties a little. I am chiefly concerned with the operation part, and some of the other men next to me are concerned with some of the other matters. It so happens that Mr. Crinkley is the one most familiar with the verbiage and the contents, and the inequities of the agreements you are speaking about.

Q. Especially the inequities, I suppose?

A. Yes, sir.

Q. You were in the shipping business before you operated the present company, Isbrandtsen Company, Incorporated, were you not?

A. Oh, yes.

Q. What was the name of the predecessor company?
A. Isbrandtsen-Moller Company.
Q. When did that begin, in 1931?
A. No. That began with Moller in 1921, I believe.
Q. '21?
A. '21, yes, sir.
Q. Not '31?
A. No, sir, '21.
Q. And the mode of operation there was that the Is-
[fol. 493] brandtsen-Moller Company chartered the ships from Denmark that were owned and controlled by Mr. Moller?
A. No. We acted mostly as an agent, general agent for A. P. Moller, and did business on our own account, as charters or otherwise. And we also had an operating agreement with A. P. Moller so that we were partners in certain enterprises.
Q. To put it broadly, Mr. Moller furnished the ships, and the company here operated them, isn't that about right?
A. I wouldn't say so. The A. P. Moller Company, when we started, didn't have much tonnage. Later on Moller accumulated more. When we first started out we chartered outside sources for many more ships than we would get from Moller.
Q. When Mr. Moller did get what we might call adequate tonnage, what was the operation situation then?
A. We were general agents and partners for the vessels operating on the lines we were operating together.
Q. But the ships were not chartered to the Isbrandtsen-Moller Company?
A. No.
Q. The Isbrandtsen-Moller Company really acted as agent for the shipowner in Denmark?
A. Well, with the qualification I just mentioned.
Q. Whose bills of lading were issued in that ship operation?
[fol. 494] A. Our bills of lading.
Q. Isbrandtsen-Moller?
A. Yes, as agents for the vessel.
Q. The Isbrandtsen-Moller Company, I suppose, moved the cargoes ultimately moved under those bills of lading?

A. That is right.

Q. To points in this country?

A. Yes.

Q. Did that company operate only out of the North Atlantic, or was it a wider range?

A. Only out the North Atlantic, and the company operated from the Far East to the North Atlantic.

Q. Did that company operate in the range that is involved in this present proceeding?

A. I didn't hear that.

Q. Did the company operate in the range that is involved in the present docket?

A. No. You mean the Moller Company?

Q. The Isbrandtsen-Moller Company.

A. Oh, Isbrandtsen-Moller. Yes, we did.

Q. Did they confine operations to that range?

A. Did they what?

Q. Confine their operations to the range involved in this proceeding.

A. Did they confine their operations? I don't understand [fol. 495] that question.

Q. Did they operate under other routes other than the ones covered——

A. Oh, yes. We had service to the Mediterranean, South America, U. K. and Continent.

Q. How long did the Isbrandtsen-Moller Company operate?

A. From its inception until—until this country entered the war.

Q. Late in '41?

A. Late in '41, yes.

Q. When did you form Isbrandtsen-Company, Incorporated?

A. Isbrandtsen Company, Incorporated was the successor to a then existing company.

Q. Substantially the same name?

A. No, not substantially the same name.

Q. What was the name?

A. North American—North American—there were several North American companies. One of your associates would know better. He attended to all the formalities about it.

Q. Well, roughly speaking, when did the present Isbrandtsen Company, Incorporated get into active operation?

A. In 1938, I should say.

Q. Was it operating regularly throughout the war?

A. Yes.

Q. Owned ships?

[fol. 496] A. Yes, owned ships.

Q. How many?

A. Five.

Q. What was their type?

A. Sundry types.

Q. Hog Island?

A. No. Sundry types. Not of one particular type.

Q. How large?

A. Oh, two of them were coastal ships.

Q. Did you operate in the war service?

A. Three of them were overseas-going ships. They were all taken by the Commission at the outbreak of the war.

Q. That was about May, 1942, was it?

A. Around then.

Q. And it wasn't until after the war that you acquired these ships you mentioned, the C-2 and C-1 types?

A. That is right.

Q. Under the Ship Sales Act?

A. That is right.

Q. Was the Isbrandtsen-Moller Company a member of any conferences, do you recall?

A. No.

Q. How about your present company?

A. No.

Q. You and any companies you had in hand never became [fol. 497] members of any conference?

A. That is right.

Q. Are you contemplating becoming a member of any conference?

A. Not of the kind I have seen so far.

Q. Do you say that in relation to the agreements you have seen?

A. I am not particular about my reference.

Q. You are aware that conferences as constituted today are open to your company, are you not?

A. I haven't even thought of it.

Q. Well, that may be, but aren't you aware of that proposition?

A. I haven't even thought of it.

Q. Don't you want to think of it?

A. No, I don't bother much with those matters.

Examiner Robinson: Does anybody else in your company worry about those things?

The Witness: No, I don't believe so.

By Mr. Hupper:

Q. What have you to say, Mr. Isbrandtsen, if anything, about the certainty of rates and stability of rates over some considerable period?

A. You would have to be a little more particular. That is a vague question.

Q. Do you favor certainty of rates over a one-year period?

[fol. 498] A. Do I favor certainty of rates over——

Q. Yes.

A. Well, I suppose I would favor eternal peace.

Q. I don't get that.

A. I suppose I would favor eternal peace, but you haven't got it today. A year is a long stretch of time considering the times we are living in.

Q. Well, you can't give me a direct answer to that question?

A. What was the question again?

I think the question was, do I favor stability for one year of rates, steamship rates. What difference would it make if I favored it or not, we wouldn't have it anyway.

Q. That is something that comes a little later, I think.

A. Well, I am not engaging in poetry. I have to be realistic.

Q. How do you make your rates?

A. As we find them.

Q. As you find them?

A. As we find them, yes.

Q. What do you mean by that?

A. Find the needs of the trade. How do Macy's make

their rates? How do Macy's make their prices? They put a price tag on. That is what I do.

Q. You pick that price tag out of thin air?

[fol. 499] A. If they do, I suppose I do. I don't believe they do, and I don't either. I consider it carefully in relation to what my expenses are.

Q. Well, in relation to your expenses?

A. Yes.

Q. How about in relation to rates that other people are charging?

A. That has to be considered also.

Q. You always consider that, don't you?

A. Well, I know what is going on generally.

Q. You know what the tariffs of the conference lines was in the way of rates, do you not?

A. Well, of course, you make these direct questions to me, and I think I told you a little while ago I would be very glad to give you direct answers, but the rate department in my business is handled by Mr. Crinkley. I will be glad to answer any particular question you have to me, but I would prefer you wouldn't make them so general.

Q. There is nothing very general about that question, just how you make your rates.

A. That is very general, Mr. Hupper. How do you make your fees?

Q. I am one of the type that doesn't have a fee.

A. How do you make them? You have a working schedule.

Q. Isn't it true that it is the policy of you and your [fol. 500] company to make your rates on the basis of the conference rates, with reductions thereunder?

A. That is what you would like us to say, that is what you would like me to say, and that is what has been said repeatedly.

Q. And it is true, is it not?

A. It is not true.

Q. How does it happen your rates appear to be always lower than the conference rates?

A. Well, you could better answer that than I could.

Q. Well, I am asking you questions.

A. Still, you could answer that better than I could, or your clients. We are making the rates according to how we find the situation in each particular instance.

Q. Now, your guide——

A. We have advertised publicly, if I may say—we have said publicly time and time again that we will make rates that will benefit the commerce of this country by which we live.

Q. Is that your——

A. If it so happens that some commodity cannot be sold—this is particularly true before the war, as in the period subsequent to the war—we mostly had a sellers' market, but several years before the war we had a buyers' market [fol. 501] almost continually. And then we have very often made rates that enabled merchants in this country to do business. I might add that in many, many cases from my observation, your clients have followed our rates down as they seem to find it necessary. It may possibly be that as a single concern not having the benefit of committees and such, that we might act a little quicker on occasion where a man would need quick action, and I have found in such cases that some of your conference clients have been mighty quick to follow the example we set. That answer your question?

A. Not completely. Isn't it true that in your company the freight rates that you quote shippers are made up, the great majority at least, on the basis of being somewhat below the conference rates?

A. Oh, no. Not necessarily.

Q. Well, isn't it a fact that practically all of them are below the conference rates?

A. No, sir. There are some of them that are higher.

Q. Do you think very many of them?

A. Not so many.

Q. Do you know how they happen to be higher?

A. Well, I suppose it is a matter of costs involved.

Q. A matter of costs?

A. Yes, sir.

Q. On a few items?

[fol. 502] A. Some of the commodities might very well have been accepted by your clients without consideration of costs.

Q. You can figure out, can you, in your office, just what it costs to handle particular lots of cargo?

A. We can figure out, and we do every day, what a steamer costs us, and we know what total freight we want to operate that ship.

Q. That is what you might call the by and large?

A. What is that?

Q. That is what you might describe as being in the by and large?

A. No. I—our business isn't run that way. We do not deliberately take freight at a loss.

Q. But you do deliberately cut your rates below the rates of other people?

A. You said that. I didn't say it.

Q. I am asking, isn't it so?

A. That is a question I don't feel required to answer because——

Q. Isn't that the policy of your company?

A. That certainly isn't our policy. We—repeat the question, and I will try to make an answer to it.

Q. Isn't that what you advertise, giving people lower rates than the conference lines?

[fol. 503] A. No. As a matter of fact, you will find our advertisement this morning that I made up before I came in here, where I distinctly say, for anyone that believes that we are a bargain store basement, they are badly mistaken.

Examiner Robinson: Would you like to have the question read?

Mr. McGovern: The witness asked that it be read.

Examiner Robinson: Read it.

(The reporter read the question as follows:

"Question: But you do deliberately cut your rates below the rates of other people?")

A. The answer is no.

By Mr. Hupper:

Q. How many other non-conference carriers are in the trade covered by this proceeding?

A. I believe there is one or two others. Of this kind?

Q. Yes. Do you remember their names?

A. The Meyer Line, and the United States Navigation Company.

Q. Is there still a third?

A. I don't know of it. Is there a third? (addressing a gentleman at the hearing table). I only know of two.

Q. How many ships do the Meyer Line people run in this trade?

A. I don't know.

[fol. 504] Q. Are you in competition with them from time to time?

A. Oh, yes.

Q. In this trade?

A. Oh, yes.

Q. Are they a large concern?

A. I don't know very much about them.

Q. How frequently do their ships compete with your ships?

A. I don't know that either. Sometimes they seem to run on one schedule, and sometimes on another.

Q. How about the United States Nav. Company? How many ships are they running in this trade?

A. I don't know that either. I haven't followed it. Maybe I should qualify that a little, that between the two enterprises, we in our concern are generally kept so busy we haven't got time to watch other people much.

Q. Well, in shipping affairs, do you make that exception?

A. No, I make no exception.

Q. I had understood from your answer earlier that you were pretty well posted on everything going on.

A. That isn't saying I am sitting on the edge of my chair watching my neighbors.

Q. I didn't ask you that.

A. You inferred it.

[fol. 505] Q. You don't know whether the United States Navigation operates two or four ships a month?

A. No, I don't.

Q. Do you find that either of those lines, the Myer Line or the United States Nav., make their rates lower than your rates?

A. Sometime I am told they have lower rates than we have.

Q. I take it you meet their rates when you know what they are?

A. Don't take that, because we don't.
Q. You don't meet them?
A. Not necessarily.
Q. Well, sometimes?
A. What is that?
Q. Sometimes?
A. I suppose sometimes, yes.
Q. Whenever it is necessary for you to get the business, I take it?
A. Probably.

Examiner Robinson: For the sake of the record, what nationality are the other two lines?

The Witness: The Myer Line is Norwegian, and the United States Navigation is an American company.

By Mr. Hupper:

Q. What function in international commerce by sea do [fol. 506] steamship rates play?
A. You expect me to answer that in just a few words?
Q. Well, I believe you are capable of it, Mr. Isbrandtsen.
A. They play an important part, as we all know.
Q. They play an important function?
A. An important function, yes, sir.
Q. Those rates cover the lifting of the goods from one shore and laying them down on another shore?
A. Yes, sir.
Q. That is all they cover, isn't it?
A. Yes.
Q. International commerce is much broader than just that function, isn't it?
A. Yes. Rates do not control the cargo altogether.
Q. Where you take in a given quantity of goods originating somewhere in this country, it comes to the Port of New York, let's say, on one of your ships to Antwerp; let's say further that those goods then move on to fairly distant destinations elsewhere in Europe. There are a great many factors related to those goods other than transportation costs on the sea. That is right, isn't it?
A. Oh, yes.
Q. Now, don't you think the nearer you can have rates across the sea that correspond to each other, the better it is

for international trade as a whole, considering its various [fol. 507] branches?

A. No, I wouldn't concede that.

Q. Why do you say that?

A. Because freight rates are not uniform in any part of the world, which you very well know. Freights from Australia to U. K., for instance, are not the same as from the Black Sea to England. I don't know whether there is any international cartel governing freights from the various producing countries.

Q. That is a little remote from the proposition I was trying to pursue.

A. That is how I understood your proposition.

Q. I am talking now about goods moving out of New York to Antwerp, and they go by your ship. Suppose they go by somebody else's ship. Why shouldn't the rate by your ship be substantially the same as the rate by other carriers' ships, or their rate be substantially the same as yours, looking at it from the point of view of international trade?

A. You mean the rates should be fixed.

Q. I haven't said that, and neither is it in my mind.

A. How would it be if it wasn't fixed? I don't particularly believe in fixed freight rates.

Q. I haven't approached that question yet. You don't object to the Conferences agreeing on rates, do you?

[fol. 508] A. I have not heretofore, no.

Q. And you don't object to it now?

A. No.

Q. Those are the only rates we are talking about at the moment.

A. Yes.

Q. As a matter of fact, do you not favor the Conferences agreeing on rates?

A. It is a matter of utter indifference to me.

Q. Well, so long as they do agree on rates at a certain figure, you guide yourself by that circumstance and fix your rates somewhat lower, don't you?

A. I repeat my answer before: No, I do not.

Q. Well, hasn't it been testified or argued in your behalf at some of the regulatory proceedings that the purpose of

your company is to fix its rates somewhat below the Conference rates?

A. No. And I will qualify that by saying that what I suppose you refer to is a Conference contract rate, under the exclusive contract system.

Q. I am not talking about contract rates. I am talking about the rates agreed on by Conference members, whatever they are, whether performed under a contract or an open tariff.

A. I wouldn't separate the two.

[fol. 509] Q. Well, I am——

A. I can't answer.

Q. I am asking the general question, do you keep your rates purposely somewhat below those fixed by the Conference members in their operations under their agreements?

A. I say to you, not necessarily.

Q. But actually and practically, yes, that is right, isn't it?

A. Well, you mean to answer for me; you go on and answer for me. There is no use in my sitting here.

Q. Well, I will put the question to you straight again. Is it not the policy of your company to fix the freight rates of your company somewhat below the rates agreed on by the Conference members for themelves?

A. My answer is, not necessarily.

Q. You wouldn't answer it no, would you?

A. My answer is not necessarily.

Q. Sometimes?

A. My answer, again, is not necessarily.

Q. Is that the best answer you can make?

A. That is the best answer I can make.

Q. Is it your belief that the lowest rates in a trade are necessarily the best rates from the point of view of the shipping industry of this country?

A. Will you be more specific and ask me what particular [fol. 510] rate? I don't like to generalize about these matters.

Q. I thought you were pretty good at it.

If the rates in a trade do not suffice to maintain the trade operations at a high level of efficiency in the sense of the high capital cost for ship properties, the high cost of operation, and so forth, is it a benefit in the long run for car-

riers as a whole to devote themselves to low rates and cross-cutting each other's rates to the point where the efficiency and stability that everybody desires cannot be maintained over a long period?

A. Well, I suppose the members of the Conferences can best answer that question. They have joined together to attain some security, some protection of their investment. Whether they get it or not is for those members to say. I have not been a beneficiary of those arrangements. I don't know how they work out.

I do know that there is, at times, more service than the trade requires, and I also know that there was no particular law that particular extra service had to be put on. So apparently it was up to each individual member whether they would take the risks that attached to providing that further service that you are speaking of, and the high costs, and so forth, and so forth.

Q. They are all very high now, aren't they?

A. They are very high, yes, sir.

[fol. 511] Q. That applies to your line, does it, as well as other people?

A. Yes, sir.

Q. They are much too high for comfort, are they not?

A. At times, yes.

Q. Practically all the time now, isn't that so?

A. Oh, we are on the way down.

Q. They haven't gotten down very far yet, have they?

O. Oh, we have gotten our oil costs cut by a considerable amount.

Q. Have you reduced your steamship rates yet in relation to the reduced cost of oil and other operating costs?

A. In a few cases, yes.

Q. Pardon?

A. In a few cases, yes.

Q. How recently?

A. Oh, we are doing that currently.

Q. On how many items, do you recall?

A. No. Mr. Crinkley will be better to say that.

Q. In view of the circumstance just mentioned, have you reduced your rates further below the Conference rates than they theretofore were?

Mr. O'Connor: I will object to that on account of the use "further." He hasn't testified he reduced below the Conference rates. If you will eliminate the word "further" [fol. 512] I have no objection to the question.

Mr. Hupper: I think he is capable of answering.

Mr. O'Connor: When you slip in something like that, I want to call attention to it.

Examiner Robinson: Read the question.

(Pending question read by the reporter.)

Examiner Robinson: He has testified his rates were generally below the Conference rates. He didn't say there was concerted action. He said his rates were generally lower.

Mr. O'Connor: I submit he hasn't so testified.

Examiner Robinson: The question is permitted.

The Witness: Will you repeat it?

(The pending question was again read by the reporter.)

A. Part of that question I have already answered, the last part. And the first part, have we reduced our rates below the Conference rates, we have done so in some cases, yes. There is no "further" in connection with that.

By Mr. Hupper:

Q. That is the best answer you can give to that question?

A. Yes, sir. Yes, sir.

Q. Do you consider the existence of the Conferences and their agreements on rates, to be of a considerable benefit to your company?

[fol. 513] A. No, sir, I don't consider it so.

Q. Not at all?

A. I wouldn't care if there were no Conferences. I would get along just as well.

Q. No, but you don't attack the Conferences, do you, the Conference System?

A. I attack the Conference Contract System, yes.

Q. But not the Conferences themselves?

A. No. No.

Q. As a matter of fact, don't you regard them as a considerable benefit to the operations of your own company?

Q. Why not?

A. Not particularly, no.

A. Well, my answer is my answer, Mr. Hupper.

Q. Well, just visualize the situation. The Conferences agree on certain rates.

A. Yes.

Q. With a complete tariff.

A. Yes.

Q. You know what those rates are?

A. Yes, sir.

Q. And that gives you quite a field for safety, let me put it, in a broad way, for fixing, if you so choose, rates below the rates of those competitors of yours.

A. I know that is your general theory. It isn't mine.

[fol. 514] Q. It is the theory, isn't it?

A. It isn't mine. I don't consider it sound.

Q. You would be just as happy if there weren't any Conferences members agreeing on rates, wouldn't you?

A. It would be a matter of indifference to me.

Q. If everybody was fixing rates, here, there, and other level, it would put you more on your mettle in meeting competition, wouldn't it?

A. I wouldn't be worse off than the others.

Q. Yes, but if everybody was doing the same thing with respect to cutting rates, wouldn't your position be a bit more difficult?

A. I don't believe so.

Q. Why is that?

A. Because then I wouldn't have that obnoxious contract system.

Q. We are not talking about——

A. (interrupting) I am talking about it.

Q. We might wait a moment before we open that up. I am talking about the Conference agreeing on rates. With a pattern right before you, here are the rates so-and-so on this, that, and the other item, and you know what they are charging, and it is easy for you, if you are so disposed, to fix lower rates, and thereby invite rather more custom than you would get if charging the same rates or lower rates.

A. I know that is your theory.

[fol. 515] Q. Isn't it yours, too?

A. No, it isn't.

Q. Why not?

A. For the reason I have said before. If there were no Conferences I would get along anyway.

Q. How can you get away from the fact, here is a rate of $10—you know what it is, you know the other fellow is charging it, and you are free to charge $9.

Now, talking about Macy's and Bloomingdale's, and those people, that is the way they do business. They undercut each other, don't they?

A. To a certain point, I suppose, when trade is pretty rugged, and what is the matter with that?

Q. You have the opportunity to do the same thing, don't you?

A. To do what thing?

Q. Undercut a rate. If you know the rate the Conference carriers are charging, you are free to undercut it?

A. If I wish, yes.

Q. And you do wish a good part of the time; that is correct, isn't it?

A. I wouldn't admit that.

Q. Why do you hesitate?

A. What?

Q. Why do you hesitate to admit it?

Mr. O'Connor: I submit there has been no hesitation.

[fol. 516] A. I answered that several times, and I think you should take my answer on that. I would like to qualify it further, that I do know, of course, some of the Conference members, including their able counsel, have got the idea that the Conference is sort of a standard works in this country, and that it is holding an umbrella over such concerns as ours.

Now, so long as you have that idea, Mr. Hupper, then I don't see really why you lay yourself open to it. Why don't you let your umbrella down if you so choose?

Q. Well, are you inviting the Conference lines, by that comment, to do away with their agreements on rates, and have open competition throughout?

A. I am not inviting anybody. I am not interfering with other people's affairs.

Q. Wouldn't you be quite disappointed if they did, as you say, lower the umbrella and fold it up?

A. It wouldn't make any difference to me. Mr. Hupper, I will qualify that, so to perhaps—if you will let me——

Q. Certainly.

A. So to perhaps add a little plausibility that I believe you need. I am brought up in the tramp trade. My early years in shipping, some 25, were spent in that trade. That is really the business I am expert in. A tramp ship owner, or anyone that manages ships in a tramp concern, the last thing he does is to make arrangements with others. He [fol. 517] only considers one thing: that is the cost of his vessel, and except if he has to, he does not sell his ship without a profit, and only in an emergency does he sell it at a loss.

Our business here has branched into the package freight business and is conducted nearly on the same lines, and today we, our business, is one-third package freight business and two-thirds tramp business. So we have not gotten very far from our training.

Thank you.

Q. Well, in other words, what you are saying is that your business is run on a fairly independent basis, pretty much in the nature of tramp trade.

A. I wouldn't say the business is run on the basis of tramp trade. In the nature of things, it wouldn't be.

Q. You say you have branched out somewhat?

A. Our philosophy, and our theory is on that basis.

Q. Tramp?

A. Yes, sir.

Q. You are aware of the purposes of the Shipping Act of 1918 and the Merchant Marine Act of 1938, are you not?

A. Fairly much so.

Q. Is it your conception of the American Merchant Marine interest of the United States as a whole, that they should be substantially controlled by a tramp trade point of view?

A. I didn't quite understand that question.

[fol. 518] (The last question was read by the reporter.)

A. In some respects, I believe it wouldn't do them any harm.

By Mr. Hupper:

Q. Now, do you go further and say that ship operator whose basic philosophy by and large is that of a tramp trader, should take the position of objecting to the methods of steamship trade adopted by many others who choose, under the law, to associate themselves in Conferences?

A. We have not objected to Conferences.

Q. Well, you object to certain things that the Conferences do?

A. Definitely.

Q. And in making those objections, you are basing yourself on the philosophy of a tramp trader?

A. Oh, no. It doesn't have to be the philosophy of a tramp trader. Just the philosophy of a citizen living in this country.

Q. No, but you are in the steamship trade.

A. I am also a citizen of this country, and there are many things going on here that I don't like at all, and I don't mind to say publicly about it, and I have done so.

Examiner Robinson: You are speaking in terms of shipping?

The Witness: I am speaking in terms of shipping, and [fol. 519] I am speaking about Conference contracts, one of the methods of the Conference. It is an abuse.

By Mr. Hupper:

Q. One of the methods?

A. Well, it is one of the methods I have come a great deal in contact with.

Q. Which method is that?

A. The exclusive contract system.

Q. How long have you known about that?

A. Oh, as long as you have known about it, I suppose. I would say the first I came in contact with it, I believe, was in '24, or '26, thereabouts. I am a little hazy on it.

Q. It has been in vogue about 25 years or more, hasn't it?

A. Well, you ought to know. You were the originator of it, I understand.

Q. Well, you have rather more information on that point than I have.

A. Isn't it true?

Q. But you have known of it around 25 years?

A. Yes, sir.

Q. It has come in pretty common use; that is right, isn't it?

A. Pretty common use, yes, sir.

Q. Not only this country, but other countries, is that right?

A. Not in the same form. I believe this country is the [fol. 520] only country of consequence where this method is being used.

Q. Do you know what method other countries use?

A. The deferred rebate system.

[fol. 521] Q. Do you call that superior in your estimation, to the contract rate system?

A. I believe it is two yards of the same cloth.

Q. Do you apply the deferred rebate system anywhere?

A. Sir?

Q. Do you apply the deferred rebate system anywhere?

A. No, sir.

Q. Do you use the contract rate system anywhere?

A. No, sir.

Q. You have occasion, haven't you?

A. Some years ago we experimented with it, to try to counteract this exclusive contract system after we had been advised by our attorneys that it was illegal, but that it would take a good deal of time, a good deal of effort to try it.

Q. Well, you did try it, didn't you?

A. Sir?

Q. You did try it, didn't you?

A. Oh, no, it can't be said we tried it.

Q. Yes, but didn't you make contracts with people in consideration of having all their business?

A. Oh, yes. We had made millions of contracts in our firm.

Q. I said in consideration of having all their transport business.

A. I don't believe so. We may have done it in a few [fol. 522] cases, but that would be very rare.

Examiner Robinson: Didn't you say a while ago you did have it for a short while?

The Witness: Yes.

By Mr. Hupper:

Q. What trade was that?

A. Well, Mr. Crinkley can better answer that, but as for my recollection, in the Far East trade, possibly also the Trans-Atlantic.

Q. Wasn't it in this trade covered by the present proceeding?

A. It may have been.

Q. It may have been. Wasn't it?

A. Well, it may have been. That is as much as I can say without referring to—after all, you are going back some 12 or 14 years.

Q. You say you also engaged in it in the Far East trade?

A. Sir?

Q. You say you had the contract rate practice in the Far East trade?

A. I wish you would correct that, contract rate practice. We have never had that contract rate practice that you had.

Q. Well, put it the other way then——

A. We are making contracts in our business all the time.

Q. Contract rates——

A. That is our privilege.

[fol. 523] Q. I am not talking about contracts other than the type we are dealing with in this proceeding. I am talking about contract rates as they are talked about in this proceeding. Didn't you have them some time in the Far East trade?

A. We made contracts in the Far East trade as a concern.

Q. Were they contracts of a general type that you are complaining about here?

A. Oh, no.

Q. What type were they?

A. Well, let's take an illustration, a merchant found he could do better business to Shanghai of plumbing materials, sir. We would make a special rate to fit the situation so that he could sell his plumbing materials, so perhaps those plumbing materials would not be sold from Germany. In

such a case we wanted something in return, so that if your people came along and brought this conference contract to bear, and perhaps would use that rate we had made for other reasons than consideration of costs, then we wanted some assurance that the rate we made would be effective for a certain period.

Examiner Robinson: How would you know they made the rate cheaper by considerations other than costs?

The Witness: I know what my costs were.

Examiner Robinson: Would it necessarily follow you know what their costs were?

[fol. 524] The Witness: Oh, I know pretty well.

By Mr. Hupper:

Q. How would you become aware of other peoples' costs?

A. I know what a ship costs, Mr. Hupper.

Q. You know what it costs to operate a particular ship?

A. Yes, sir.

Q. You don't know all the details of another company's business, do you?

A. I don't have to, to know that.

Q. Wasn't there a time when you had two sets of rates in respect of Far East trade on file with the Maritime Commission?

A. You mean on one ship?

Q. No. I am talking about the rate you charged.

A. Yes, sir.

Q. Why was that?

A. For the reasons I just explained.

Q. Well, on that occasion?

A. I have answered.

Q. On that occasion, you had one rate which you might describe as the open tariff rate, and another one which certainly had some of the characteristics of the contract rate.

A. Anyone coming into our concern could get the lowest rate we had in the house any time.

[fol. 525] Q. But you did have those two sets of rates on file with the Maritime Commission?

A. We had them on file. But anyone, any genuine shipper could get the lowest rate we had in the house.

Q. What did you have the higher rate on file for?

A. I can't just answer that. I believe—what year is this that you refer to?

Q. I don't know.

A. It must have been '34, '35, or '36.

Q. I couldn't give you that information.

A. I don't have a clear recollection, but if you wish the question answered, I can refresh my own recollection on it.

Q. There was a time when you did have two rates on file?

A. That is right. I believe we had two rates on file with the Commission, and I also believe we had some correspondence with the Commission about it.

Examiner Robinson: Mr. Isbrandtsen, you say that, for instance, a shipper of plumbing equipment, you would make a special agreement with him. Would that rate apply to all other plumbing shippers, or just to that particular one?

The Witness: It would apply to all. But it was just unfortunate there was only one.

Examiner Robinson: It worked on any commodity, so that——

[fol. 526] The Witness: If anyone else offered us plumbing supplies he would get that low rate. I will qualify that, why there was only one, because Germany was selling all the plumbing material at that time to Shanghai. In this country we didn't do that business at all. Even the Standard Sanitary Manufacturing Company, I tried to interest them, but they had a plant in Germany, and were not interested to ship from here.

Examiner Robinson: That is the only phase I was interested in. It could have been newspapers, as far as I am concerned. I wanted to know if everybody was on the same basis.

The Witness: There were at one time here where a good many of our industries found the going very rugged. They moved their plants out to some of the other places—Canada, England, Germany, Belgium, some in Scandinavia. And if you wanted really to do that particular business, there is no use of having a book before me and say that it is a book of rates, now I will sit here and wait for trade. Trade was not forthcoming. Is that right?

Examiner Robinson: If you say so. You have answered what I wanted to know.

By Mr. Hupper:

Q. The circumstance you mentioned just a moment ago [fol. 527] was in relation to the Far East, was it?

A. That particular circumstance, yes. If I refreshed my memory about those matters I might think of more.

Q. You are sure you weren't in the Far East conference at that time when you had the two sets of rates, are you?

A. We had never been in the conference.

Q. Neither outward nor homeward?

A. Neither outward nor homeward.

Q. Well, did you have some kind of a cooperative arrangement with the conference as to the rates you would charge?

A. No. Have you in mind perhaps that Mr. Moller was in the homeward conference from China?

Q. No, I haven't anything in mind except the question I asked you.

A. Yes, he was. Yes.

Examiner Robinson: We will take a short recess.

(A short recess was taken.)

[fol. 528] Examiner Robinson: All right. Let us proceed.

By Mr. Hupper:

Q. Mr. Isbrandtsen, in the making of your rates from time to time, does your company pay any attention to the plentitude of tonnage or the shortage of it in relation to cargoes that are offered?

A. In the making of package rates, or general rates? Are you differentiating between package rates and general rates?

Q. No, I am really not differentiating.

A. Well, in the package freight trade we keep that as stable as we can, irrespective of what the momentary situation might be.

Examiner Robinson: Did you say monetary or momentary?

The Witness: Momentary.

By Mr. Hupper:

Q. Why do you keep it stable?

A. Why shouldn't we?

Q. I didn't get that.

A. Why shouldn't we?

Q. If that is your answer—do you think it does your company g[illegible]d to do that, or do you think it does the shipper good?

A. My [illegible]swer is, we try to keep them as stable as we can.

[fol. 529] Q. Well, you must have some purpose.

A. Well, that is a condition incident to the package trade, I think.

Q. Well, does that mean that as a general proposition you favor the stability rates?

A. Yes, we favor the general stability rates within reason, on a reaonable level.

Q. Well, is that level one that will get you the business instead of letting it go to the other carriers?

A. If need be, we will go after the business, if we need it.

Q. But hasn't it been true, Mr. Isbrandtsen, that you form your rates largely in relation to the general supply of tonnage, in relation to the amount of cargo offered?

A. No, not in the package freight business.

Q. Well, shortly before this country got into the Second World War, weren't your rates rather higher even than those of the Conference lines?

A. They may have been in some cases. Maybe we didn't have the same contracts they had.

Q. Well, you charged the shippers more then because space was not so plentiful, didn't you?

A. In some cases, we may have, and in other cases we may have charged them much less.

Q. Well, later you charged them less?

[fol. 530] A. Well, I wouldn't say later; I didn't say later.

Q. Well, I am asking you the question.

A. No, you didn't ask me, you answered for me.

Q. Well, I will ask you the question.

A. I object to you answering for me.

Q. Well, I don't consider myself competent to answer for you.

A. No, I don't consider you competent, either, to answer for me.

Q. That is one big subject matter on which we are all agreed. But isn't it true that as ship space was fairly tight, you charged the shipper more, and when ship space was plentiful you charged them less, so as to get rather more than your fair share, or the share you would have received at equal rates?

A. No, that is distinctly not true. Our package freight business has been running—has been operating on a liner basis, on an independent liner basis.

Q. Well, an independent liner basis with rates lower than those of the Conference lines, isn't that correct?

A. You have mentioned that before, and I qualified my answer on that already.

Q. You said, "not necessarily so."

A. Our rates are not necessarily lower than those—

Q. Not necessarily, but I ask you the question, isn't it factually lower?

[fol. 531] A. In some cases, yes; in some cases higher.

Q. Well, in cases where you made those rates higher, why was that?

A. Because it suited us to do so.

Q. You thought you could get better business at the higher rate?

A. No, it suited our business to do so. It was our privilege as an independent carrier.

Q. Well, was that to drive away business? Doesn't business tend to move at the lower rate?

A. Not drive it away—perhaps I didn't need it.

Q. Well, you would agree as a general proposition that the lower rate gets the business and the higher rate drives it away?

A. Not according to your exclusive contract.

Q. I am not talking about that yet.

A. I am.

Q. Well, you are a little premature.

A. You have been talking about it already and I think we should stay on the subject.

Q. Well, if you wish me to revert to that subject I shall be happy to do so.

A. No, but the subject is before us.

Q. You favor the exclusive contract yourself, don't you?

A. Oh, no, I do not. We have never practiced it.

Q. Well, you are a contract shipper, aren't you?

[fol. 532] A. Yes, but we never used the exclusive contract system. We have never put the screws on a shipper. We have never penalized a shipper; we have never threatened a shipper; we have never coerced him; we have never told a shipper he couldn't go to some other store and buy what he wanted.

Is that clear?

Q. Quite. You have clarified——

A. So those two rate-makings are so vastly different that there is no comparison possible.

Q. But your company itself has made the contracts with carriers, has it not?

A. Contracts with shippers, you mean?

Q. As a shipper, your company has entered into contracts with the Conference lines, has it not?

A. Yes—in each case under protest.

Q. You were a free agent, weren't you?

A. No.

Q. You signed the contracts, your company did?

A. Under coercion.

Q. Who coerced you?

A. The Conference.

Q. They threatened you?

A. An inferred threat.

Q. You signed them so as to get the lower rate, didn't you?

A. No.

Q. Why did you sign them?

[fol. 533] A. Oh, pardon me, I didn't unsdertand that question.

Q. You signed those contracts, your company did, so as to get the lower rate?

A. I signed them so we wouldn't be penalized by paying the higher rates. That is the way I like to put it.

Q. You wanted the lower rate?

A. I didn't want the higher rate.

Q. That is the way with every shipper of a sane mind, he wants the lower rate effective if he can get it.

A. I am afraid that the other shippers look upon it the same way. They don't want to pay the higher rate; they don't want to be penalized.

Q. You are just like all the rest of them, you signed up the contract?

A. In that respect, the way I put it, yes.

Q. Well, that is the natural disposition of shippers, isn't it, to get the lower rate if they can?

A. Well, if most of us follow the easier way instead of getting up our temper and telling you all to go to a hot place, yes, but that is, you can't, so we will go along and I am afraid that is the way most shippers feel about it.

Q. Well, it is your proposition that shippers who desire contract rates shall be forbidden to have them if there are a number of carriers that are willing to make certain rates for them?

A. That isn't the way I put it. I say that no shipper [fol. 534] should be penalized for not patronizing one carrier or a number of carriers.

Q. Well, if a shipper decides that he wants to have a contract with a group of lines in the Conference, why is it that you object if he is doing that? He certainly has his rights, and assuming he is 21 years old, he knows what he is doing when he makes a contract.

A. I am not quarreling with any shippers much about that. I have quarreled with the lines for bringing about the condition in this country here that I understand is entirely lawless.

Q. Yes, but you are interfering, aren't you, with the rights of shippers to make the contract of the kind they like with carriers?

A. Oh, I don't believe that would be interference. You let loose of this system and the flag will go up on the full mast.

Q. Well, what I am getting at, Mr. Isbrandsten, you

might not want to answer it, but the question is, why is it that you who are operating a line largely on the tramp philosophy, object to Shippers X, Y and Z throughout the country having, if they so desire, a contract with the respondent carriers at a certain rate that they agree on? Is it because that results in the business going to the other carriers instead of to your line?

[fol. 535] A. No.

Q. That is competition only, isn't it?

A. No, it is because the system you are practicing, and everyone in the transportation business knows it, and certainly you know it, too, the system is designed to prevent access to the man that won't follow the line and nothing else. It is not supposed to be for the benefit of the shipper.

Q. That is curious—the shipper must think otherwise or he wouldn't ask for the contract, would he?

A. Well, I will give you an example. Supposing your wife went into Macy's store and got a price, and was told the price would be higher if she went down to Wanamaker's, what do you suppose she would do? She might need the article so bad she would take it. Maybe that was the only article, but she wouldn't like it.

Q. But if she wanted to buy at Macy's, she would have the right to do so, wouldn't she?

A. Yes, she would have the right to buy in Macy's, yes.

Q. She might think there was a better article there, or somehow the delivery service was better.

A. Well, that would be another matter. I am saying that if Macy's told her she couldn't go to Wanamaker's and buy it and if she did she would have to pay more money at Macy's, I should say that Mrs. Hupper would very much object to that procedure.

[fol. 536] Q. Well, of course you are talking about domestic household affairs now. What we are trying to do here is——

A. Well, I am not going to incorporate——

Q. —foreign maritime commerce of this country.

A. I am talking about domestic matters; I am not talking about how things are in England and what you can get away with there, or what you can get away with in China.

I am talking about what you are getting away with in the United States, which is a domestic matter.

Q. Well, when you talk about "get away with" I don't get much out of that expression, but we are dealing with the Merchant Marine of the United States, which is in very keen competition with the Merchant Marine of various other countries, and we are trying to get the best recipe, as I understand it, and I don't think you are opposed to that.

A. Now, wait a minute. You are not talking about the Merchant Marine of the United States.

Q. Wait until I finish my question. I don't think you object to that, what is the best recipe; I am saying that the foreign commerce of the United States is a vastly complicated thing, and how we build up and maintain our Merchant Marine, our sea service, in a way that will insure its stability and be to the greatest benefit of those who engage in foreign commerce, and it is highly complicated.

A. Not any more complicated than many other businesses. [fol. 537] Why should shipping be such a mystery? It takes the good apprenticeship and some good application later on.

Pardon me, can I be permitted to say—you say you are talking about the American Merchant Marine, or the Merchant Marine of this country. You are not talking about the Merchant Marine of this country, you take in the whole world here.

Q. I am talking about the commerce—

Mr. O'Connor: Let him finish, please.

The Witness: Wait a minute. I must qualify that. You take in the whole world here and practically tell the whole world you can come in here and prevent access to a man in this country who lives here, who wants to do business here. That is what you are doing.

By Mr. Hupper:

Q. Well, that is a new proposition to me.

A. That is an old proposition to me. If it is new to you, you have missed the point altogether.

Q. Well, I do that most of the time. Who are your agents in Rotterdam?

A. Vinke & Co.

Q. How long have they been your agents?

A. Twenty-five years—25 years.

Q. Good people, are they?

A. Good people.

[fol. 538] Q. You know them quite well?

A. I know them quite well.

Q. They come over here once in a while?

A. Not very often.

Q. You go over there once in a while? Or some of your representatives?

A. Not very often.

Q. Well, on occasion?

A. Oh, very seldom—got no time.

Q. You keep in close touch with them, I suppose?

A. Oh, current correspondence.

Q. You tell them what to do, and they tell you what they have done, is that right?

A. It goes on all the time between the departments.

Q. Has that been going on now for almost 25 years?

A. Yes.

Q. They are entirely trustworthy people, are they, do you think?

A. Yes—act to the best of their ability.

Q. Do you recall dealings you had with them or propositions you put forward to them with respect to the contract rate system?

A. No, I don't. We have never put on any suggestion to them about a contract system, as you understand it.

Q. Well—

[fol. 539] A. I can say that much, because that hasn't been a policy of our company.

Q. Well, haven't you put it to them on occasion that they should initiate for you, you might call it a contract rate or exclusive patronage system with lower rates for that reason?

A. Never exclusive patronage, as you understand it.

Q. Well, as I understand it, what was it you put forward to them?

A. Well, as I explained before, I gave rather a lengthy

answer to one of your questions, and I would like to refer to that answer. I think I qualified it fully.

Q. Well, in other words, you haven't anything more to say on the question now?

A. If we—we make numbers of contracts for transportation. We do it every day. New rates are filed with the Commission constantly—we made such-and-such contracts with the shippers, but you will never find in any one of them a penalty.

Q. You are talking now about the rates which you file with the Commission within 30 days after you charge them, aren't you?

A. I suppose so.

Q. Pursuant to the ruling in Docket 128, wasn't it?

A. That's right.

Q. That is the rate you charged on shipments out of this [fol. 540] country?

A. That's right.

Q. Not rates that you charge into this country?

A. Well, I believe—

Q. You don't file those with the Maritime Commission, do you?

A. I believe they are filed also—at least, I believe they should be.

Q. You don't know whether they are or not, do you?

A. I can't say, no. I like to believe we are complying with the numerous and cumbersome regulations.

Q. I want to ask you two or three questions now about a contract rate system westbound. Do you recall whether or not on or about January 17, 1939 Messrs. Vinke, your Rotterdam agents, in relation to shipments in this trade addressed shippers with a statement substantially that if they made contracts an extra freight reduction was offered?

A. No, I have no recollection of that, Mr. Hupper, and it wasn't my department, so I don't believe I would have seen it in the first place.

Now, I am not the one directly concerned with the westbound service.

Q. Well, I will ask you just two or three questions on the record. You may or may not recall.

A. Yes, sir.

[fol. 541] Q. Do you recall whether or not on March 13, 1939 Messrs. Vinke & Co., your agents, addressed shippers with the statement: "If you have cargo for shipment on this occasion, you will be able to profit from the lower rates which are again offered for this non-Conference sailing."

A. Well, such a particular letter I would hardly recollect, Mr. Hupper, but I don't think there is anything very unusual about making such a solicitation, if I should express an opinion now.

Q. Do you recall whether or not—

A. You may know that on shipments from Holland, they are not usually made by outside vessels, but follow the flag a good deal.

Q. A further question: Do you recall whether or not on the date of May 8, 1939 Messrs. Vinke addressed shippers on your behalf in language substantially as follows:

"Should you be prepared to sign a contract for all your shipments with our principal, we would be in a position to offer you even more attractive rates in quite a number of cases."

Do you recall that?

A. No, I do not recall that. But those matters I would regard as a good solicitation.

Q. I didn't get your full answer.

A. Also that I would regard as a good solicitation under [fol. 542] the circumstances.

Q. Good solicitation for contract rates?

A. Good solicitation under the circumstances, was my answer.

Q. In other words, Messrs. Vinke, your agents, and doubtless subject to your instructions in a matter so important as that were soliciting shippers to make exclusive contracts?

A. By all means, that's right.

Q. That is correct, isn't it?

A. That's right.

[fol. 543] Q. Do you recall whether or not—

A. Vinke & Company are our agents.

Q. Do you recall whether or not on the date of July 18, 1939 Messrs. Vinke as your agents addressed shipper with

a statement reading substantially thus: "Extra freight reductions are offered by contract and we would appreciate learning whether you are willing to close a contract with our principal for all your shipments."

A. Yes.

Q. Do you make the same comment about that?

A. The same comment.

Mr. O'Connor: Mr. Hupper, I understand you are reading now from two papers.

Mr. Hupper: I am reading from some original circulars.

Mr. O'Connor: Why not put them in evidence?

Mr. Hupper: They are in German, and I will have them translated.

Mr. O'Connor: After they are translated, will you put them in evidence?

Mr. Hupper: Yes. I will be glad to do so.

The Witness: Pardon me, Mr. Hupper, do you read German?

Mr. Hupper: I used to—you notice I said substantially. [fol. 544] Mr. O'Connor: Can we give them a number, Mr. Examiner, sir?

The Witness: We could take the German version of it.

Examiner Robinson: We could identify them now.

Mr. O'Connor: We will put them in later.

Examiner Robinson: How many pages?

Mr. Hupper: There are four letters, five sheets.

Examiner Robinson: In other words, five sheets altogether?

Mr. Hupper: Yes, sir.

Examiner Robinson: Yes, let's put them in as one exhibit.

Mr. O'Connor: There are five sheets, but how do you identify them?

Mr. Hupper: Whatever the exhibit number is.

Examiner Robinson: We will give them No. 5 for identification.

Mr. O'Connor: But I mean, how do you identify the paper, whatever it is?

Examiner Robinson: We are going to do that now. I just wanted to get the number straight. You can identify each particular one, or you can call them 5-A, 5-B, 5-C, and so forth.

Mr. Hupper: Well, let us do it as 5-A and so on.

[fol. 545] Examiner Robinson: Is that satisfactory to you, Mr. O'Connor?

Mr. O'Connor: Yes.

Examiner Robinson: We will call them 5-A, B, C, D, and E.

Mr. McGovern: May we have the originals, Mr. Examiner, as well as the translations?

We all know translations are sometimes loose.

Examiner Robinson: Do you want to have them photostated and put those in?

Mr. Hupper: Well, I will see that a complete set is put in.

Examiner Robinson: Would photostats satisfy you?

Mr. O'Connor: Oh, yes. Now, what are they, a letter, or a document, or a circular?

Mr. Hupper: They are circulars which purport to have been addressed to shippers or consignees all dated in Rotterdam.

Mr. O'Connor: Signed by Vinke & Company, I understand?

Mr. Hupper: Yes, Vinke & Company.

Examiner Robinson: Well, remember they are not in evidence, we will just mark them for identification.

(Documents above referred to were marked Exhibits 5-A, 5-B, 5-C, 5-D, and 5-E for identification.)

[fol. 546] Examiner Robinson: Mr. Isbrandtsen, you say you are not familiar with those letters. Would there be anybody in your concern now that you could name now that would be familiar with them?

The Witness: I believe Mr. Crinkley generally would. You are speaking now about papers in connection with the old Isbrandtsen-Moller Company?

Examiner Robinson: I realize that.

The Witness: You are speaking about affairs 10 or 12 years ago, but if it is of any importance, I believe Mr. Crinkley can answer.

By Mr. Hupper:

Q. Now, Mr. Isbrandtsen, you were conducting the operations just as you are now?

A. Well, our operations were a little larger than it is now.

Q. But you were the head of the show, put it that way.

A. That is the way you put it.

Examiner Robinson: Well, is it true?

The Witness: Don't call our business a show.

Examiner Robinson: I mean, were you the principal guiding hand, shall we put it that way?

The Witness: I don't want to put anything in here—

Examiner Robinson: I just want to know what the situa-
[fol. 547] tion is.

The Witness: When you come to the line in a business, I can't say I am the head of it, head of the show, what you call the show, the line business takes several people to cooperate with one another. In the full cargo business I am fairly well the head of the show.

Examiner Robinson: You do have the final determination in either case, though, don't you?

The Witness: The procedures are pretty much established in the company by common usage and by ordinary usage and current usage, and we go along on that, and there is no need for me to inject myself several times a day into matters, therefore, when you ask me a question about certain letters from Vinke in 1939, I can't really help you much.

By Mr. Hupper:

Q. Well, you have never been known as a shrinking violet, you have always had your hand pretty firm on the tiller as to policy, isn't that a true statement?

A. It wasn't because I wanted to. It takes a pretty active man to counter the schemes you cook up.

Q. Apparently this scheme was cooked up between your people here and the people in Rotterdam, and I wasn't in on it.

A. No, this was not a scheme, Mr. Hupper. We made contracts day in and day out, sometimes at night too.

Q. That is bad. Did you see an article in the March magazine called Fortune?

[fol. 548] A. Yes, I saw it?

Q. Did you write part of that article?

A. Is that part of the question, Mr. Hupper?

Q. Yes.

A. No, I didn't write it.

Q. You were interviewed with respect to the subject matter of it before it was published, were you not?

A. I don't know if you would call it an interview. I wouldn't call it an interview. I believe that some of your contemporaries may have supplied some of it.

Q. How about your supplying some of it?

A. No, I don't think I supplied any.

Examiner Robinson: Not even the picture?

The Witness: Not anything.

By Mr. Hupper:

Q. Did you supply the photograph?

A. They snapped that in the office. I don't think you tell the Fortune people very much what to do. They sort of take liberties with you. My wife didn't think it was very complimentary.

Q. You read the article?

A. Yes, I did,—very loosely, I read it.

Q. Did you object to the Fortune people about it?

A. Well—I wrote to them about it, I thought it was a little on the light side.

[fol. 549] Q. Did you write to them about the portion of this article which I will now read to you: "Almost single-handed he has fought against the conference rate system and the contracts that require shippers to deal only with conference companies. Isbrandtsen likes to sit down with a shipper and figure out a price that will do justice to them both. He likes to say when his ships are full so that he can make a good price to shippers and a profit for himself, and he wants to put in at any port in the world where there is cargo. Indeed, he does quite a little trading for his own account during the course of a year. When he cuts a rate too sharply he is naturally not voted the most popular man in the American Shipping Fraternity. But neither is he the least likely to succeed. Every business can use at least one gadfly"——that is not my word—"and in the final quote this March shipping man's presence on the U. S. shipping scene is doubtless salutary."

Did you object to that description of your noble self?

A. Well, Mr. Hupper, I don't like to be dealt with by such commentary. I think a person is entitled to a degree of privacy. When I have something to say about subjects of that sort I generally pay for the space and publish it under my own name under a paid advertisement. So there shouldn't be any "ifs" and "ands" about it, and certainly you don't consider the Fortune magazine is an authority on shipping matters, do you?

[fol. 550] Q. No, nor anything else. Speaking about paid space and advertising, you do advertise quite actively in the Journal of Commerce and other papers, do you not?

A. We do.

Q. And in the course of that advertising you every once in a while say something about lower rates to shippers, don't you?

A. Yes.

Q. That means lower than the conference rates?

A. Not necessarily.

Q. Well, what do you expect the shipper to understand from the reference to lower rates?

A. I don't consider the conference as standard, particularly a standard institution any more than I am. I believe in United States independent shipping is standard. Have you thought that the conferences are perhaps following us, and not we them?

Q. My thought doesn't extend that far yet.

A. All right.

Q. As a part of your advertising shippers are suggested delicately not to make contracts with the conference carriers, that is correct, isn't it?

A. Not to make contracts under that exclusive contract system, that's right, and that's the only contract you have.

[fol. 551] Q. Not to engage in the contract rate practice, so-called, that you are talking about here?

A. That's right.

Q. And it is really your proposition that if the shipper to whom you are advertising is addressed, and they must be legion, chooses with a knowledge of all the facts to seek a contract with the conference lines, he should not be permitted to do so, because if he contracts with other people

then you don't get his business, that is your proposition really, isn't it?

A. Oh, no, that isn't our proposition. I consider the conference contract unfair, an unfair trade practice, and I don't omit to tell everyone who wants to listen that that is what I think of it.

Q. Well, what you say is that shippers who want contracts shall not be permitted to have them?

A. Oh, no, I don't say that.

Q. That is the point of your proceeding here, isn't it?

A. What good would it do if I did?

Q. Well, isn't that the point of your proceeding here, that shippers shall not be entitled to have such contracts?

A. That isn't the way I put it.

Q. You want such contracts, put it that way.

A. There is no other choice to them except to take it, the same as I do. In our commercial affairs, we have to take [fol. 552] it. I signed them under protest.

Q. Yes, but your proposition is that these contracts ought to be forbidden and therefore that the shippers shall not be entitled to get them because they are not permitted?

A. Well, I don't believe that entitlement amounts to a dime. I don't believe that entitlement is anything but a burden.

Q. Well, you don't want shippers to have them?

A. What is that?

Q. You do not want shippers to have these contracts?

A. I will put it the other way, Mr. Hupper, I don't want the shipowners to use those tactics, and we don't use them ourselves.

Q. In other words, you want to be free to get the business of every shipper because he is not entitled to have a contract with other lines?

A. No, what I want, I want free acess and I am entitled to it, to everyone in the United States who is open for business. That is my right.

Q. Well, doesn't your asserted right go a little further, you have a right to make contracts of any kind with shippers who want to do business with you—how is it that shippers who want to do business with other people don't have a correlative right to contract where they wish?

[fol. 553] A. The conference has a right to make contracts, but not to make them exclusive.

Q. What is a contract unless it is exclusive? If I contract to ship my goods by you, am I not thereby excluded from shipping them by Mr. X?

A. Oh, no, your conference works with the object of getting the whole business, namely, to stop competition. That is the only object of it. We don't make contracts because we want to stop you from doing business.

Q. What contracts are you making now?

A. What contracts are we making? We are making freight engagements daily, we are making full cargo arrangements, and conducting a general shipping business along legitimate lines.

Q. If a shipper makes a freight engagement with you, you expect him to carry it out, don't you?

A. Yes, sir, if it is legal.

Q. Well, I take it you don't intend to make any that are not legal?

A. That's right.

Q. Therefore, the contract that you make you call a legal contract and you expect the shipper to go through with it?

A. That's right.

Q. And if he doesn't go through with it, he has broken his contract, hasn't he?

A. That's right.

[fol. 554] Q. It isn't your proposition, is it, that the shipper that makes a contract of whatever kind shall be free to break it?

A. No, it isn't, except he has made a contract that is illegal, and he has made it under pressure. That is a different matter.

Mr. Hupper: I will suspend my examination now.

Examiner Robinson: Cross-examination.

Mr. O'Connor: We won't cross-examine until the direct examination is concluded.

Examiner Robinson: What do you mean by suspend?

Mr. Hupper: Well, I am going to put in these exhibits when I get them, but I have no more questions except on redirect.

Cross-examination

By Mr. O'Connor:

Q. Mr. Isbrandtsen, several times today in answer to questions propounded by Mr. Hupper you referred to making contracts every day. On one occasion you said you made hundreds of contracts a day. What kind of contracts were you referring to?

A. Freight engagements.

Q. Were any of them exclusive?

A. Charter parties, sales contracts for goods, and so on.

Q. Were any of them exclusive patronage contracts?

[fol. 555]) A. No.

Q. Did any of them resemble in any way the contract-non-contract which the conferences use?

A. Not the slightest.

Q. Mr. Isbrandtsen, you are president of Isbrandtsen Company, Incorporated?

A. Yes, sir.

Q. You have a number of vice-presidents?

A. Well, we don't use titles much with us, but we have four or five gentlemen that are vice-presidents.

Q. And you have heads of departments?

A. Heads of departments, sir.

Q. And how many employees would you say you have in the ship operation department at 26 Broadway, for instance?

A. Oh, about 160.

Q. That doesn't count the people on the docks—

A. No.

Q. —or connected with the operation of the ships, or the people abroad?

A. No.

Q. You delegate responsibility in your organization?

A. Yes.

Q. Did you ever charge two shippers who shipped cargo on your ship, one of your ships, the cargo being the same kind of commodity, did you ever charge those shippers different rates or tariffs?

[fol. 556] A. To my knowledge, no. I don't want to

qualify my answer either. I think I should make it a clear no.

Q. If at this time, back in about 1934, if that is the date when it has been suggested here that some form of contract was entered into between your company and some shipper, was that in any respect an exclusive patronage contract as used by the conference system?

A. No.

Q. Was it in any respect in the form of contract-non-contract rate which is used by the conferences?

A. No.

Q. If any shipper who had signed such a form of an arrangement with you thereafter gave some of his business to some other steamship line, did you retaliate against him?

A. I don't know of any one case where we have done it.

Q. This arrangement, it has been mentioned that you may have had back in those years that have been referred to as a contract you used. Have you any familiarity with the form of that so-called contract?

A. No, I haven't. I can't say I have now. Mr. Crinkley may have discussed it with me at the time, but it is so many years ago.

Q. Now, would you say it is anything more than the acknowledgment of an arrangement with a shipper?

[fol. 557] A. That, I believe is a fairly good description.

Q. Did it have any penalties in it?

A. No.

Q. For any act the shipper might do?

A. No, not that I know of.

Q. You were asked, or it was suggested in some of these questions propounded to you that this exclusive patronage contract rate system might have something to do with promoting the American Merchant Marine and you started to answer. Now, let me ask you that if this exclusive patronage contract rate system were ever permitted to be used in this North Atlantic Trade and American Shippers, Exporters and Importers, were signed up by these two conferences, taking into account that there are only four American lines, in that trade and eight foreign lines, would you say that the use of this exclusive patronage contract system

would promote the American Merchant Marine in that trade?

A. No, I believe I answered that before. I believe the exclusive contract system is distinctly to the disadvantage of the American shipper.

Q. And would you say also to the American Merchant Marine?

A. No, that is the same thing.

Q. Without shippers, you couldn't have an American Merchant Marine, could you?

[fol. 558] A. No. We have the business in this country. We have some ships.

Q. Something has been said here about umbrellas. The rates agreed upon by these conferences are substantially always the rate fixed upon the American ceiling of cost of operation, isn't that correct?

A. Generally speaking, that would be so.

Q. And ordinarily the cost of operation of the foreign members of that conference would be less than that Amer-- ican ceiling?

A. That's right.

[fol. 559] Q. So that the American high ceiling price paid by American shippers could constitute an umbrella for the foreign operators, could it not?

A. Not only could not, but it does.

Q. Yes, it is a fact, is it not, that the foreign steamship operators in these Conferences where the rates are fixed on the American cost of operation, get the benefit of these high rates which come out of the pockets of American exports and importers which, in effect, is a bonus or subsidy to those foreign operators, is it not?

A. It is an umbrella.

Mr. O'Connor: That is all.

Mr. Galland: What order are we going to follow on cross-examination?

Mr. Cockrum: I would like to ask one question, if I may.

The Witness: May I make a short addition to the last answer?

Mr. O'Connor: If you want to amplify that last answer, go ahead.

The Witness: Under the system, I say it is an umbrella and it works in this way, that gradually the foreign ship will push the American ship to one side, using that umbrella, and, furthermore, is doing it. I don't know if you have seen some of the latest issues of the British MOTORSHIP, [fol. 560] for instance, the British publication MOTORSHIP, and if you notice the number of firstclass motorships, ships from 8,000 to 12,000 tons of fast speeds being built abroad, many of them, or most of them——I wouldn't say most of them, but many of them for the American trade, those ships would hardly be built if it wasn't because of the existence here of that umbrella.

And by the same token, you will see the complete absence here of the building of any modern American freight ships. I don't believe at this moment there is one built, that I would call a ship on a par with those foreign motorships.

Now, if you ask Mr. Hupper—I don't know whether it was a suggestion or a question, or what, you asked whether there was a recipe for doing all this different. I think the recipe is supply and demand under free trade, and everyone, even high school boys, are being taught here that it is the rule of the land, that the rule of supply and demand would work in such a way that we would also here build these fast modern motorships, and they would not be all built abroad.

Certainly our costs are higher here, but our ability to adjust ourselves may be as great as their ability to adjust themselves. But there is not an American ship owner today, I believe, that really has confidence that he can face that competition. And some how or other, our benevolent [fol. 561] Maritime Commission has endorsed this exclusive contract system in such a way that it works in very peculiar ways.

As an illustration, I would like to mention the case of my own son.

Now, I am on in years, and when the war stopped I figured I could really call it a day and pass it on to the youngsters, who are a little more rugged, but lo and behold! young swains from abroad, many times their only qualifications being the sons of well-to-do ship owners, come here and actually endeavor to stop the young American boy from

getting business in his own country. That position is untenable.

Mr. O'Connor: It hasn't made any difference whether those young American boys are veterans of the last war or not?

The Witness: Well, I wouldn't talk about the flag part of it, but I will just say we live here, we talk about free access, let's have it.

Mr. Galland: Would you mind asking him how they are doing it?

Mr. O'Connor: Under the umbrella, he is talking about under the contract system.

The Witness: I say if it wasn't for the contract system, which is partly designed to exclude competition and is also partly designed to hold the members together of the Conferences—I have seen again and again where the Confer- [fol. 562] ences have spoken about stability in connection with their establishment—stability, stability of rates, stability of trade.

Prior to the war, and as we ended up prior to the war we had an extensive business from China, Japan, Saigon and the Philippines. There were Japanese members, there were British members, there were Norwegians—why, it is an open secret that the discounts in Japan commenced with 10 per cent off the book, and there were no independents.

By Mr. O'Connor:

Q. You mean discounts given by the members of the Conference?

A. Yes.

Q. Discounts from their established rates?

A. Discounts began from 10 per cent off the book. No shipper in Japan—

Mr. Hupper: Shouldn't we confine ourselves to the rate on the North Atlantic and European—

Mr. O'Connor: You talked about the Far East.

The Witness: I thought perhaps you asked for a recipe, that I might give you one, but—you are quite right, and I shouldn't discourse upon that subject.

Mr. O'Connor: Mr. Hupper asked you at length about the Far East.

The Witness: I will cut that short. I do think the remedy in all this grief and strife doesn't lie in riding the shipper. [fol. 563] It doesn't lie in jamming on service where no service is needed. Under the system any owner can put on all the service he wants. If he wants to gamble with his own money, and if he wants to put the other man aside, he can do so. It all depends on what kind of gambling spirit he has.

But then, don't call it a Conference. A Conference on rates is no Conference, is no protection to the property, of the agreement on rates, on speeds, on service. And maybe there is some room for discussion. But just to center all your activities on riding the ship owner and see how many screws you can put on them, that isn't going to cure the ill, and that is the reason we are here today, and may possibly be some other place—we will be hearing a great deal about this before this is finished, because the subject here is not changed until it has been interpreted. At least, we will keep on with it until we get an interpretation.

I can say furthermore if it is the law of the land that you can do this and that can be done, then our company, for one, is not going to bet against the law of the land, but is going to—we consider all matters to see where we stand. For that matter, we may go out of this business altogether.

Mr. O'Connor: Mr. Cockrum wants to ask you a couple of questions.

By Mr. Cockrum:

[fol. 564] Q. Mr. Isbrandtsen, I would like to ask you one question. You spoke, I believe, of certain decreases in your operating costs since the war, and you spoke of decreases in the costs of your oil, as I recall.

Is it your position that those decreases in operating costs should be passed along to the shipper in the form of lower rates?

A. Well, some of these decreases.

Q. In other words, Mr. Isbrandtsen, is it your position that the shipper should decrease the benefits of decreased operating costs as they come along?

A. I believe competition will—if there is competition, it will decide that fo. you. And I believe that as costs go

down, they will be passed on, and must in the necessity of things.

In our own case, the oil was raised last year so that in our particular operation the raise meant $864,000, I believe, the raise alone in oil. But then, in other respects we had increased port costs, longshoremen had been getting more money all the while, and men on ships had been asking for more, and the featherbedding that we have had particularly in American ships has not been discounted here in the last few years, so we really have that to get out first before we can talk about substantial decreases.

But of course the oil increase we received last year was [fol. 565] most burdensome to most companies.

I would like to say one thing about the port costs in that connection. We pay in Japan 35 cents for doing the same work we paid $6.35 for in New York.

Q. Well, Mr. Isbrandtsen, I probably didn't make myself clear. I understood you to testify that certain costs with respect to oil, it had recently come down.

A. Yes. Yes, that is true. But they were arbitrarily raised last year, the first of the year, and the oil companies should never have made that increase. I, for one, am asking the oil companies to hand the money back.

Mr. Cockrum: I think that is all, Mr. Examiner.

Examiner Robinson: You haven't gotten an answer to your question. Are you satisfied?

The Witness: I can answer that further. I believe the costs will be reflected, the decreased costs will be reflected in the rates you will receive from here on if there is competition. And we, as parties in the trade, ought to be quite satisfied to go along and take things as we find them. We are making adjustments all along, and wherever we can, we are correcting our tariff all the time as the need be. And no one has accused us of being exorbitant. We are doing a large business for little profit.

Mr. Cockrum: That is all.

Examiner Robinson: Are there any questions from [fol. 566] other interveners?

If not, Mr. Galland.

By Mr. Galland:

Q. Mr. Isbrandtsen, in the portion of your complaint that is marked Paragraph B you ask the Maritime Commission to order the Conference lines to cease and desist from various practices, including "taking any steps to execute or effectuate any exclusive patronage contracts with shippers."

Just taking that much that I read, did you actually mean that you want the release in this case to go that far?

A. That isn't far. That's all we ask, and that's what the Court granted us, I understand.

Q. Suppose there were no dual scale of rates involved in the Conference exclusive patronage contracts, would it be offensive to you if the Conference really went out and induced shippers to sign exclusive patronage agreements, paying the full tariff rate?

A. To pay for definite quantities for definite freight——

Q. Well, let us say for all the shipper's freight for a year.

A. Well, I couldn't have any say about that. If the Conference wants to do it that way, let them try it.

Q. So it is not the exclusive patronage contract as such that you object to, but the exclusive patronage contract coupled with a dual scale of rates whereby the lower scale [fol. 567] of rates applies to the shipper who signs up; is that right?

A. It is the exclusive contract system that provides that no shipper can deal with me when he deals with the Conference. That is what I object to, and there is no mystery about it, it has been repeated here again and again. That is what it all is about. We want access.

Q. All right. In other words, you don't want the contract under any terms relative to rates or penalties, or anything else, to tie shippers up so that for a year after the signing of a contract the shippers can't deal with you; is that your position?

A. No, that is not entirely my position.

Q. Well, would you repeat it?

A. That is not entirely my position.

Q. Because I want to find out exactly how far the Government——

A. (interrupting) My position is, I can say to you what my position is better than I can say what my position is not. My position is, I do not want ship owners here and abroad to come here, tie the trade up and prevent access by American citizens who also want to be in the trade.

Q. Well, what I am trying to get at is whether you are principally concerned with the fact that they do tie it up, or with the means that they use to tie it up?

[fol. 568] A. The means they use.

Q. If they were to tie it up solely by inducing shippers to sign up with the Conference lines exclusively, and they didn't lure them into that contract with a lower rate, or frighten them with a penalty, then you would say that you would be content to take your chances against them, your chances in competition with them; is that right?

A. Well, I am not required to pass an opinion on that, because the Conference will do as they darn please, as they have done heretofore, and I can hardly think that it would turn out as innocent as you describe it.

Q. Well, I don't know whether it would or not, and I am not suggesting that it would. I am trying to get at the basis of your objection to this system.

A. Well, I have told you what our objection is to that business. My son objects, too, that he can't, when he returned here, that he can't go into any company without being told "We are sorry but these people put the screws on us." And that is the way they do.

Q. Now, in connection with the contracts that you, yourself, have described, I understand that you did use a dual system of rates, but did not incorporate any specific penalty for violation of the contract; is that right?

A. Yes, and further, that we have no two rates on one ship. In all cases are the shippers of goods entitled to the [fol. 569] lowest rate we have in the house.

Q. All right. Now, let me take up that point. You mentioned shipments of plumbing supplies to Shanghai.

A. Yes.

Q. And you said, if I recall correctly, that you had only one contract shipper of this supplies, is that right?

A. Yes, sir.

Q. And he got the lower contract rate; is that right?

A. Well, he got a contract rate.

Q. He got a contract rate which was lower, as I understand your testimony, that the published non-contract rate.

A. Oh, no, because I don't believe at that time we had a—I don't believe at that time—you confuse that somewhat. I think my answers on that stand by themselves, but we created this business and the man got a rate that suited him, and, furthermore, we had an understanding with him, and he continued to ship with us because we were the ones that had enabled him to do the business.

Q. Mr. Hupper asked you when he introduced this subject, whether you did not have tariffs of dual rates on file with the Maritime Commission, and your answer was yes; is that correct?

A. Yes.

Q. So that when the shipper of plumbing supplies under contract signed up with you, he got the lower of the two [fol. 570] rates schedules applicable to plumbing supplies; is that right?

A. We didn't apply the higher.

Q. All right.

A. We didn't apply the higher.

Q. You did not apply the higher rate. And you didn't put him under any specified contract penalty for violation of the contract?

A. No.

Q. Was it your thought in signing him up to a contract that he would observe the contract?

A. Yes.

[fol. 571] Q. What is your thought, was it your thought that if he should break that contract you would have had any legal resort against him?

A. No, I don't believe so. As a matter of fact, I don't believe we would have made the booking with him in the first place if we had thought that. He was not entitled to it.

Q. Is there any purpose in signing a man up to a contract except for the purpose of assuring, as far as is reasonably possible, that he will do what he says he will do?

A. Well, there is always such a thing as an honorable memorandum for an honorable understanding—rather say a memorandum of an honorable understanding.

Q. Nevertheless, you thought that the contract, the written word, was of some use, is that correct?

A. It is always of some use as a memorandum, particularly in a business that has large affairs. It is necessary.

Q. And do you concede that if he had violated the contract, Isbrandtsen Company would have at least have had the right to go into court and demand damages for that breach?

A. It is a question. It is a question.

Q. At any rate, you signed him up to what you thought was the contract you could enforce in court?

A. Are you talking about this incident I mentioned to Shanghai?

Q. Yes, sir.

[fol. 572] A. Did I say to you we had two rates in that case? I don't believe we did.

Q. That is what I thought you said to Mr. Hupper.

A. No, we had only one rate, because there was only one shipper and there was only, I believe, our goods going at the time.

Q. And I think you said to me that by virtue of having signed the contract the shipper was exonerated from payment of the higher rate?

A. Oh, no, I didn't say that.

Q. Well, I am quite far from understanding——

A. The higher rate could not be applied. This was just an instance where the rate was given to do the business that otherwise wouldn't be done. That is what I call a contract. Maybe you put some other construction to it. You apparently have this contract system in mind, but with us the contract system has never been applied.

Q. Did he agree to ship solely by Isbrandtsen under that contract?

A. Naturally, in making such a rate to this man here and taking this as maybe at a very slim margin, that I wouldn't expect your group to come along shortly after, make the price a couple of dollars less, not because your costs were cheaper than mine, because mine, I think were the cheapest, [fol. 573] because you didn't want to see Isbrandtsen do the business, and my understanding with that man was all about that, and nothing else.

Q. Did he pay some——

A. And I expected that man to live up to that.

Q. Is my understanding correct to this extent, that he paid some different rate as a result of having some contractor to ship solely by your line than he would have paid if he had not entered into that engagement?

A. There was no business done except at this lower rate. But when I did give him this rate——

Examiner Robinson: But you did have a paper rate, didn't you, you did have a paper rate?

The Witness: Yes, we did have a paper rate, but it wasn't effective—no business done under it.

Examiner Robinson: Nevertheless, it was a rate?

The Witness: The conference has many rates with no business ever done under them—doesn't mean anything.

By Mr. Galland:

Q. In connection with your statement that no two shippers of the same goods of the same ship have ever paid different rates, wouldn't it be true if two shippers of plumbing supplies to Shanghai would have paid different rates if the second shipper had not signed the contract?

[fol. 574] A. There weren't two shippers. There was only one.

Q. I recognize that.

A. I don't know what it would have been. There weren't two. There was only one.

[fol. 575] Q. It is not inconceivable there could be two shippers of plumbing supplies to Shanghai, and I would like to have you tell me whether you would have offered the same terms to a non-contract shipper?

A. I don't say that I am good at forecasting—this goes back in 1934 or '35, and I should say that we have all, both Conference lines and we, were very apprehensive about the state of the Union with respect to business, and business was decreasing, and when we made this man the rate it was undoubtedly a sacrifice on our part, and we expected them, if my competition, the Conference, would come along later and offer him an improvement, that it was me that aided him in getting the business and he should stay with me. That was all there was to it.

Q. Then as the record stands, we have your testimony that Shipper No. 1, who was the only actual shipper, had to sign the contract to get the rate?

A. A freight engagement.

Q. Shipper No. 2, who is the hypothetical shipper, might or might not have signed a contract—you don't know?

A. Oh, yes, I know very well that Shipper No. 2 didn't show up.

Mr. Galland: That is a hypothetical question.

Examiner Robinson: You say you made a sacrifice, but I remember your saying the stuff wouldn't have moved [fol. 576] anyway if you hadn't lowered the rate. As I would interpret that, you got business which you wouldn't otherwise have gotten.

The Witness: We often get business supplying a little ingenuity.

Examiner Robinson: Well, that isn't sacrificing. You got something out of it.

The Witness: Well, it was a sacrifice in that particular instance. We had to meet peculiar situations. We have had—we are considering our rates in the background of the—let me strike that out.

I don't want to give the impression that we are sitting here with a Conference book before us and then say, "The Conference will do thus and so and so, we will do thus and so."

What we were doing when competition was keen up to the time of the war, we considered what went out of Trieste, what was going out of Hamburg, what was going out of Liverpool, and we kept pretty much abreast of what the rates were from those places. And we had the Japanese competition, and when you speak about competition, those different places, really, they are competition.

Examiner Robinson: Competition with a capital C.

The Witness: That is what we had to watch, and, after all, you take the sulphate of ammonia, when the Japanese [fol. 577] began to make their white sulphate of ammonia, then our business just evaporated. When duPont shipped numerous materials of various kinds, the Japanese bought a couple of barrels of it and made it over and called it something else, but it was the same thing.

By Mr. Galland:

Q. Would you say, Mr. Isbrandtsen, that the man who shipped plumbing supplies to Shanghai under contract had a contract rate?

A. I would say he had a contract with us, as good a contract as we could get.

Q. You had a contract, and the contract specified his rate, is that right?

A. There weren't two rates, we just filed another rate on top of it, if rates were then to be filed. These rates change all the time. We file a new rate with the Board.

Q. I would like to call your attention——

A. These rates, incidentally, may I say this, these rate filings incidentally came about because the Conference wanted to follow our rates, wanted to know what we were doing.

Q. Now, I would like to invite your attention to Exhibit 1-G, which I will show you in a moment. It is a copy of U. S. Maritime Commission Agreement No. 7920-1 between members of the French North Atlantic Westbound Freight Conference and members of the Continental North Atlantic [fol. 578] Westbound Freight Conference, and I would like you to tell me what language in that agreement, which is only slightly over a page long, you regard as representing illegal action on the part of the Maritime Commission?

Mr. O'Connor: Oh, I submit, Mr. Examiner, that is purely a legal question. The witness is not a lawyer, and——

Mr. Galland: It is his grievance. I want to know what his grievance is.

Mr. O'Connor: His grievance is set forth in the complaint, and is drafted, as you well know, by his lawyer, who will argue the legality or illegality of any matter here. It is not for a lay witness to expound on the law to you, or to anybody else about what the illegality of a document is. I object to it.

Examiner Robinson: I sustain that.

By Mr. Galland:

Q. Let me read to you the paragraph marked 1 in Exhibit 1-G; it amends Article 1 of the previous agreement 7920 to read in this way:

> "If cargo of Belgian or Dutch origin is tendered at French ports to the lines of the French Group, they agree to assess the rates (contract rates if established and merchant holding contract) of the Continental North Atlantic Westbound Freight Conference."

[fol. 579] And the balance of the paragraph is the same provision relative to the rates of the French North Atlantic Westbound Freight Conference.

Now, as I have read that paragraph to you, does it express Maritime Commission approval of a form of activity that is offensive to your company?

Mr. O'Connor: I make the same objection, Mr. Examiner. It calls for a conclusion on the law, an interpretation of the law of the contracts. The question should be addressed possibly to the lawyers as to what their contentions are on that language.

Examiner Robinson: Sustained.

[fol. 580] Mr. Galland: Mr. Examiner, I don't feel that the lawyers have any reason for grievance here. I am trying to find out just what kind of a contract rate system is under attack by Mr. Isbrandtsen. He is the party who is the only one who is offended by what was done here.

Examiner Robinson: That is true, but you have got an agreement here, and from that agreement you must arrive at certain conclusions legally, and I don't think he is the proper person to do it.

Mr. McGovern: Furthermore, Mr. Examiner, those are the contracts we are talking about.

Mr. Galland: I am trying to keep in mind the issues relative to the illegal action of the Commission in approving agreements, and what the conferences may have done pursuant to those agreements. The questions are somewhat similar, but I will drop that line of questioning in view of the ruling.

By Mr. Galland:

Q. How long have you been in the North Atlantic Continental Freight, Mr. Isbrandtsen?

A. Well over 20 years.

Q. And is this your first official proceeding attacking the contract rate system under the conference agreement that governs that trade?

A. I believe it is.

[fols. 581-583] Examiner Robinson: Off the record a minute.

(Discussion off the record.)

Examiner Robinson: Suppose we adjourn until ten o'clock tomorrow morning, subject to Mr. Isbrandtsen's being called at his convenience.

(Witness excused temporarily.)

(The hearing was adjourned at 4:45 p.m., to reconvene tomorrow, May 10, 1949, at 10:00 a.m.)

[fols. 584-585] Met, pursuant to adjournment, at 10:00 a.m.—May 10, 1949.

[fol. 586] PROCEEDINGS

Colloquy

Examiner Robinson: All right, gentlemen, we will commence.

Mr. Hupper: Mr. Examiner, to complete Exhibit 5 of yesterday, I present photostats of the several circular letters then mentioned, of Vinke & Company, Rotterdam, being dated January 17, 1939, March 14, 1939, May 3, 1939, and July 18, 1939, together with translations that are physically affixed thereto of the particular paragraphs that I referred to yesterday in my questioning of Mr. Isbrandtsen.

I have seven here of each of these documents, one being for the Commission's records, and six for distribution among the several parties.

Mr. O'Connor: Now, all I have before me is a two-page letter in German, with just a slip attached in English, say-

ing, "17 January 1939: Freight contracts. With contract an extra reduction is offered."

As I understood, yesterday I objected to the use of these papers unless the entire paper was put in evidence. I understood the entire paper was going to be translated.

Mr. Hupper: I don't think I understood to do that.

Mr. O'Connor: That was the understanding. I objected to the use of part of the paper unless it was all put in [fol. 587] evidence, and I think the record will bear that out, and I understood all the things would be translated and put in. Just an excerpt doesn't mean anything.

Examiner Robinson: Off the record.

(Discussion off the record.)

Examiner Robinson: Mr. Hupper says he will translate, have translations made of the entire letters and put them in. These are marked for identification. Exhibit 5-A for identification is the letter of January 17, 1939; 5-B, the letter of March 14, 1939; 5-C is the letter of May 8, 1939. And 5-D will be the letter of July 18, 1939.

(The above photostats of letters were marked for identification Exhibits 5-A, 5-B, 5-C, 5-D.)

Mr. O'Connor: Of course, it is understood these are marked only for identification and the complainant reserves the right to object when they are offered in evidence.

Examiner Robinson: Yes.

Mr. Hupper: I will call Mr. Crinkley to the stand.

Matthew S. Crinkley, called as a witness in behalf of the respondents, after having been first duly sworn, was examined and testified as follows:

[fol. 588] Direct examination.

Mr. Hupper: I make the same reservation with respect to Mr. Crinkley's testimony that I made with respect to Mr. Isbrandtsen, as concerns his being a hostile witness, in that he is a member of the plaintiff company.

Mr. McGovern: We make the same objection as to the hostility of the witness unless the hostility has been dem-

onstrated. He is Mr. Hupper's witness, and his testimony will be Mr. Hupper's testimony.

Mr. Hupper: I am quite content to abide by all the conventions as to witnesses. My theory of this case and my conduct in it is that this is an adversary proceeding, and I am searching for the adversary. The other side shouldn't produce any adversary.

Mr. O'Connor: The courts told us to go back to the Maritime Commission and try to get them to obey the law.

Examiner Robinson: Gentlemen, I think we all understand each others' positions. They are duly on the record. So go ahead.

Mr. Hupper: I am not suggesting personal hostility, but legal—due reservation of my legal rights.

By Mr. Hupper:

Q. Will you state your name?

A. Matthew S. Crinkley.

[fol. 589] Q. Mr. Crinkley, you are the vice-president of the Isbrandtsen Company?

A. Yes.

Q. How many vice-presidents are there?

A. Three, I believe.

Q. Are you the chief vice-president?

A. Well, I am a vice-president in charge of line business.

Q. Who are the other vice-presidents?

A. I believe that Mr. Jakob Isbrandtsen is the first vice-president.

Q. What is he in charge of?

A. He concerns himself mostly with charters.

Q. Charters?

A. Yes, charter business, charter business.

Q. Charter business?

A. Yes.

Q. Is he a son of Mr. Isbrandtsen?

A. Yes.

Q. What other vice-presidents are there in addition?

A. I don't believe I am certain whether there are other vice-presidents or not.

Q. But you are the vice-president in charge of what you call liner business?

A. Yes.

[fol. 590] Q. As such vice-president, what are your functions?

A. I have authority in the fixing and establishing of freight rates, and it is my responsibility to get business for the line.

Q. Could I put it briefly this way, that it is your business to fix freight rates at such a level that your line will secure business under those rates?

A. I think you could put it that way.

Q. How long have you been associated with Mr. Isbrandtsen in one company or another?

A. Nineteen years.

Q. That means you came in 1930?

A. 1930, yes.

Q. Before that, what had your experience in shipping affairs been?

A. I had been connected with a large leaf tobacco exporter for about 12 years.

Q. Where was that located?

A. In North Carolina.

Q. And your business was also in North Carolina?

A. Yes.

Q. Not in New York at all?

A. Not prior to 1930.

Q. What company was that?

A. A. C. Monk & Company, Incorporated, Parmele, North

[fol. 591] Carolina was the main office.

Q. What were your functions with that company?

A. I was the secretary of the corporation, and among other duties I had the responsibility for arranging the ocean shipments of the firm, which firm shipped to many parts of the world.

Q. Over different ocean carriers, I presume?

A. Yes.

Q. You made the bookings with those carriers for this company?

A. Yes.

Q. In making those bookings, I suppose you dealt sometimes with the representatives of conference lines, so-called?

A. Yes. Most of the time.

Q. Did that company prefer to deal with conference lines?

A. In most trades there was only conference lines to deal with.

Q. Are you a graduate of M.I.T.?

A. No.

Q. Did you go to some business school?

A. No.

Q. What college did you go to, if any?

A. None.

Q. The college of hard knocks?

A. I think that is it.

[fol. 592] Q. Before you went with the Monk Company, what had been your business experience?

A. I had worked for some five or six years with a distributor of automobiles, when I was just out of high school.

Q. What led you to go with Mr. Isbrandtsen's company in 1930?

A. Mr. Isbrandtsen made a trip through the tobacco section to meet shippers, and on this trip he visited my firm and talked to me, and I was so attracted to his philosophy and seeing the thing from the standpoint of the shipper, I decided that the steamship field with an independent would be a very attractive one, and I sought employment with Mr. Isbrandtsen for that reason.

Q. How long have you been vice-president?

A. I can't answer that exactly, but I think probably about 1934 or '5.

Q. As vice-president in charge of liner operations and the getting of business, I assume that you made it your business constantly from the time you joined Mr. Isbrandtsen in 1930, or when you became vice-president in 1934 or '5, right up to now, to keep yourself very familiar with everything that was going on in the shipping field?

A. To the best of my ability.

Q. That involved, I take it, the posting of yourself on the operations of other steamship carriers so far as pos-

[fol. 593] sible, did it not?

A. Yes.

Q. Familiarizing yourself with the provisions of the so-called conference agreements?

A. Yes.

Q. Keeping yourself alert as to all publicity with respect to shipper affairs?

A. To the best of my ability, yes.

Q. Did your functions and duties also include advertising in the press?

A. Not to any great extent. Mr. Isbrandtsen has always handled that himself.

Q. Are you referring to now, or do you include in that statement the advertising that has appeared over the last year or two, or perhaps as found in the Journal of Commerce?

A. Yes, sir. Those advertisements that appear in the press are used in the work of Mr. Isbrandtsen.

Q. Do you collaborate with him on those matters?

A. To some extent.

Q. He discusses with you regularly all the matters of policy, does he not?

A. That is right.

Q. You consider yourself, by reason of your experience, well qualified to advise with him on matters of policy, do [fol. 594] you not?

A. I think so.

Q. Your interest in publicity as concerns the shipping business, and particularly the interest of Mr. Isbrandtsen and his company in relation to that business leads you on occasions to make public addresses, does it not?

A. Well, the public addresses I have been making, such as they are, have been on invitation.

Q. I quite agree to that, but you make them when invited?

A. That is right.

Q. And you have made addresses from time to time right up almost to this present moment, have you not?

A. Yes.

Q. In the course of these addresses you have dealt with the conference system, the so-called contract rate system, and various other matters that relate to our American shipping?

A. No. Those addresses have been only as concerns the conference contract system.

Q. Well, when you say the conference contract system, are you referring to the contract-non-contract rate?

A. Yes. We call it the exclusive patronage contract rate system. It is a sort of a long series of words, but that explains the thing.

Q. It has various names, all meaning the same thing?
[fol. 595] A. Yes.

Q. And what *are you* referring to is the form of contract that the conference lines involved in this docket 684 have been using?

A. That is right.

Q. And your addresses and comments of one kind or another have been addressed in considerable part to that subject?

A. Almost altogether.

Q. Is it true that your company has no objection to the conference system as such?

A. We have raised no objection to the conference system as such.

Q. Why is that?

A. For the simple reason that the law provides for it.

Q. You are sympathetic with the purposes of the law, is that right?

A. No. I believe that where the law is clear good citizens should observe it.

Q. But your interest in the conference system has not led your company or yourself, so far, to apply for membership in any conference, has it?

A. No.

Q. Your company has not applied for membership in the two conferences that are involved in this Docket 684?
[fol. 596] A. No.

Q. I take it you are aware that the provisions of the conference agreements, contemplate new lines coming in on application?

A. Yes.

Q. In that respect, you would agree with me, I take it, that those conferences are wide open to independents coming in if they wish to do so?

A. That is my understanding.

Q. Do you understand further, Mr. Crinkley, that any line that comes in to a conference pursuant to that provision for entrance of new members has the right, once they

are in, to participate in these so-called exclusive patronage contracts?

A. Yes, I understand that.

Q. Have you taken those two circumstances, let us say the right to join the conference and the right to participate in the contract if you do join—have you taken those into consideration in the formulation of your opposition to the conference rate system, or exclusive patronage system, out of respect to you?

A. Let me see. Have we, or have I taken into consideration in our opposition to the contract system that the conference is open to us, and if we joined we could not participate in these contracts?

[fol. 597] Q. Yes.

A. Yes, that has been taken into consideration.

Q. How importantly did you and your company take that into consideration in relation to your decision not to apply for conference membership?

A. The decision not to join the conference has not been based on the study of those particular questions. The policy of Mr. Isbrandtsen personally and the company has been one of independence. That is my own personal inclination, and it was for that reason I sought to join his organization.

Q. I didn't get that.

A. In other words, to put it another way, Mr. Isbrandtsen and myself, just for ourselves, don't want to join into a combination.

Q. In other words, it is a matter of personal and therefore company preference to be independent?

A. That is exactly right.

Q. You have no objection at all on the ground that there is anything in the conference agreement, or in the exclusive patronage system, to exclude you from the benefits of the same, if you personally, as a matter of preference, would think the other way and decide to join up? That is correct, isn't it?

Mr. O'Connor: I object. I don't understand the [fol. 598] question.

Mr. Hupper: Read the question.

(The reporter read the question.)

A. I don't think I can hardly answer yes to that, if I understand it correctly.

By Mr. Hupper:

Q. Why don't you answer in your own way?

A. I will do that. First of all, it is Mr. Isbrandtsen's personal and business policy to remain independent. I feel the same way about it, and have, and it is for that reason I am with him. Now, I tried to be independent, as a basic policy, and I think that is rather the typical American way, these other factors, of course, just simply would, in my own opinion, put membership in conference on a more undesirable basis. I consider the conference contract system is unlawful, and I would not want the company nor myself to be engaged in some unlawful practice.

Q. You have been aware for some years that the conference contract system, or the exclusive patronage system we will call it, has been widely practiced?

A. Yes.

Q. Back about as far as 1924 or '5, do you recall?

A. My own thought was about 1926, but I may be out one year or more.

Q. Well, it has been practiced close to 25 years?

[fol. 599] A. Right.

Q. By and large?

A. Right.

Q. During that period you have been pretty well posted personally as to the provisions of the contract in use, haven't you?

A. Yes.

Q. Your company has not up to very recently taken any formal steps versus that system?

A. Not before a court or an administrative body. Publicly we have fought this system for a great many years.

Q. You have advertised heavily against it?

A. Yes.

Q. That is a fair statement, isn't it?

A. Yes.

Q. Your company has nevertheless succeeded in getting a great deal of business, has it not?

A. We have done a fair business.

Q. You have enjoyed as much as anybody in the trade, haven't you?

A. I don't believe I would be able to answer that, sir.

Q. Wouldn't you be willing to just guess at it?

A. I wouldn't be able to say that we have done as well as others in the trade. I can exemplify it if you care to have me.

[fol. 600] Q. Certainly. Go ahead.

A. In the pre-war period, trans-Atlantic trade, my company had a service which average- two sailings a month, with ships that loaded from 4 to 5,000 tons. We were in competition with many lines; for example, the Holland American, sailing once a week, and sailing—I believe one ship they had was 12,000 tons. The same with the Black Diamond, and so forth. So as I say, our earnings could not be above 8,000 deadweight tons per month. I am sure all these lines I speak of carried several times that volume. So in that period it can hardly be said we enjoyed as much business as our competitors.

Q. Well, considering the number of ships you were operating, you did reasonably well, didn't you?

A. I think we did.

Q. That was in competition with the contract rate system, was it?

A. In the trans-Atlantic trade, yes, contracts were not applied on all items, only on a specified number.

Q. Well, with respect to that specified number, how did you fare?

A. In some of the items covered by the contract we did not fare well at all. For instance, the automobile traffic, Antwerp to Rotterdam, we enjoyed no traffic. It was all tied up with conference contracts.

[fol. 601] Q. You got a considerable amount of other traffic?

A. Two sailings a month with 5,000 tons.

Q. Didn't you do as well as anybody else, considering the tonnage you were operating?

A. I don't see hardly how I could say that. We didn't carry the volume of business our competitors carried.

Q. You can't say to the contrary, can you?

A. Well, in comparison with our competitors we did not do as well as they.

Q. You did well enough to lead your company to continue actively in business?

A. Yes. Definitely.

Q. You are quite familiar with the provisions of the Shipping Act of 1916, and also the Merchant Marine Act of 1936, I take it?

A. I am particularly familiar with the 1916 Shipping Act. I haven't studied so closely the 1936 Act.

Q. But you have read it, I suppose?

A. I have read it, yes, sir. But it has been some time ago. I am not familiar with all of its provisions.

Q. What was your purpose in your becoming familiar with the provisions of the 1916 Act?

A. It has to do with regulation of shipping.

Q. Generally speaking, you are in favor of shipping [fol. 602] regulations?

A. Yes, sir. There have to be some regulations. There shouldn't be an excess of regulations, but with common carriers I believe there should be some regulations.

Q. I have noted from time to time, and I heard Mr. Isbrandtsen yesterday make reference to international cartels in shipping, and I understand that reference to be to the conferences?

A. Yes, sir.

Q. Is that your understanding?

A. Yes, it is my understanding.

Q. Have you sometimes described the conferences yourself as international cartels?

A. International shipping cartels, I believe.

Q. You used the word "cartels"?

A. Yes, sir.

Q. What is your understanding of the word "cartel"? What does it mean?

A. My understanding of a cartel is in any given industry where a group, by agreement and combination between themselves, seek to control that particular trade or industry, by various means, including the fixing of rates, or the allocation of markets, or the control of production. Sometimes a pooling of revenue.

[fol. 603] Q. Well, "cartel" in the objectionable sense, was a foreign creation, wasn't it?

A. Steamship conferences were a foreign creation also.

Q. But I am asking you a question.

A. I don't feel I can say of my own knowledge, but I surely suppose that that is true.

Q. I just wondered what led you to emphasize the word "cartel" from time to time?

A. The only cartels I have ever heard of sought to create monopoly, and it is my firm conviction that is what the steamship conferences seek.

Q. They seek monopoly?

A. Yes, sir.

Q. Well, you agreed that the steamship conferences involved in this proceeding are authorized by the Maritime Commission under the 1916 Act, do you not?

A. Yes, sir, surely.

Q. You still try to call them cartels?

A. Yes, sir, I do.

Q. Isn't the use of the word "cartel" adopted for the purpose of creating prejudice in the minds of the public?

A. So far as I understand, it can hardly be argued that a conference is not a cartel. I think the steamship conference is simply a cartel called by a different name.

Q. I wish you would answer my question.

[fol. 604] A. I thought that was an answer. I am sorry.

Q. Isn't it for the purpose of creating prejudice because of the ill-famed cartels abroad?

A. It was for the purpose of opening the eyes of some people that did not realize a conference was really a cartel.

Q. How do you know that the people who heard your comments about cartels, or read them, knew what a cartel was anyway, outside of the prejudicial use of the word?

A. I believe that most people in this country that read the papers, and that listened to any talks I made, know what a cartel is. But I have found a great many of them don't realize that a steamship conference is simply a cartel.

Q. Well, in the sense that you do not object to steamship conferences as such, for the purposes as set forth in their agreements, then you are almost saying now, aren't you, that you don't object to a certain kind of cartel?

A. It couldn't be said that way. My lack of objection to conferences is based on the fact that they are provided for by law. Personally, I am against the monopoly system in business, and I think that is typically American. The country as a whole is opposed to trusts, monopolies, cartels, and whatever you call them.

Q. The public in this country is not opposed to shipping conferences?

A. Some of them, for the reason they don't understand [fol. 605] what is involved in the conference.

Q. They can't legally be opposed to them, in view of the shipping act, can they?

A. No, sir. And I have called their attention to that many times, that they can't legally object to it.

Mr. O'Connor: I object.

Mr. Hupper: He is my witness.

Mr. O'Conner: I am going to remind you again of that later on.

Mr. Hupper: He is very well posted, I think.

[fol. 606] Examiner Robinson: All right.

By Mr. Hupper:

Q. Is it the fundamental standard of your company that wide-open competition between all carriers is the best calculate- to serve the purposes of the Shipping Acts of the Marine Commerce of this country?

A. I don't believe that I can say positively that such is the feeling in my company. My own personal conviction is that open competition in the long run is the best.

Q. So that, broadly speaking, your standard is for open competition?

A. Yes, sir.

Q. Constantly and throughout?

A. That is my own personal conviction.

Q. That is the frame of mind that actuates you on behalf of the country in the making of rates?

A. It really is, to a large extent, yes, sir.

Q. It really comes down, doesn't it, in essence and generally speaking, to the proposition that this country's maritime interests would be best served by every line engaging

in commerce operating substantially on a tramp basis, isn't that right?

A. I don't believe I would understand it that way, no, sir.

Q. Well, would you come pretty close to that?

A. No, sir, I think there is a fundamental difference there [fol. 607] that has to be taken into account.

Q. It does?

A. That a tramp, in my opinion, is a vessel operating not on any regular schedule as to ports of call or sailing dates, whereas line service or common carrier service is something entirely different.

Q. You were here yesterday throughout Mr. Isbrandtsen's testimony, were you not?

A. Yes, sir.

Q. You heard him refer to the tramp basis proposition by and large?

A. Yes, sir, I understood him to mean, if you will pardon me, to more or less put it this way: that in the tramp field there is unlimited competition, of course, and every operator must be able to stand on his own feet and meet competition, and it is that general background that he brings into all of his shipping business, one of very much independence and a believer in competition.

Q. When you say "independence and competition," you mean fixing rates at such levels as will get the business in the face of all comers?

A. I don't know if I ever have considered it exactly in that light, to fix rates to get business in the face of all comers. My own personal experience has many times been that I have not fixed or adjusted a rate to get some business, [fol. 608] I have let business pass rather than to fix a rate that would get it.

Q. Yes, but it is your business to fill your ships if you can—in order to do that you have to fix a rate that will draw the business to your company, isn't that right?

A. I feel I have to fix rates that are competitive and will get business, and that will not be so low that my firm won't earn a profit.

Q. Yes. But that is the main consideration, your firm to earn some profits, and to do that, fix a rate that will get the

business; that means that your line gets it rather than some other—that is just A, B, C, isn't it?

A. To fix the rate that will get the business at a profit.

Q. And in order to do that, you generally fix the rate below what other people are charging?

A. I don't want to be in a position of quoting Mr. Isbrandtsen's words, but I don't know any way to answer that well, except say, not necessarily. I can exemplify on that if you choose to have me do so.

Q. Go ahead.

A. On March 2, 1946, when shipping was returned to private hands from UMA, we immediately reestablished our sailings to Continental Europe. The rate scale that had been in effect in 1945, when the United States Government did all the shipping that I know of that was done, was the [fol. 609] scale that was generally adopted by the carriers in that trade. We adopted them as our rates, and for more than a year our rates were 96 or 98 per cent exactly the same as other lines in that trade.

During that persiod of time, of course, a substantial portion of the cargo was Government cargo that was moving, either of this Government or some of the European governments, and we, of course, at least theoretically had an equal chance at that business at equal rates.

I should say within a year and a year and a half, possibly a year after March 2, 1946, some of the purchasing missions began to transfer the operations from the private hands, and commercial business began to move in more volume, and as commercial business began to move and as supplies became more plentiful, there began to be a demand for adjustment of the freight rates.

The Conference adjusted quite a number of rates. Quite a few shippers did not approach the Conference, perhaps, but approached us to get our long standing in the trade, and we likewise began to adjust rates, and there gradually crept in a difference between the rate structures that were being quoted by the Conference lines and those quoted by my company.

But I am bring- that out to establish the point that it is not a fact that our policy has been or is necessarily that

[fol. 610] whatever the Conference quotes we quote under it.

Q. Well, factually, within a certain period extending up to the present moment, your company has regularly quoted rates, a great majority of which were less than those quoted by the Conference lines; that is correct, isn't it?

A. I should say that there is a substantial part of the items that a shipper does ship where our rates are less than the Conference.

Q. And those rates relate to items that shippers naturally move over your lines, is that right?

Mr. O'Connor: If you understand the question, all right.

The Witness: Let's see; that relates to cargo shipped with us, is that the meaning of your question?

Mr. Hupper: I will strike that question and reframe it, if you didn't understand it. I don't want to confuse you.

By Mr. Hupper:

Q. You make those lower rates in order to get the business, that is correct, isn't it?

A. We make those lower rates to get the business.

Q. Those rates we are talking about now are rates lower than the Conference lines?

A. Oh, I see. We make those rates on some items per-[fol. 611] haps to get business, and on some items because of a reasonable demand by shippers for adjustment away from war-time rates.

Q. But it happens, does it not, that the great majority of your rates are lower than those of the Conference carriers?

A. I wouldn't be able to say the great majority. I don't know exactly what that means. A substantial part of our rates are less than the Conference.

Q. Well, you look over the Conference tariffs when you are making rates for your own line, do you not?

A. We try to keep in mind the competition, of course.

Q. And you do examine the Conference lines' tariffs, that is right, isn't it?

A. At times I do, yes.

Q. Well, every time that you need to consider the matter of rates, you examine those tariffs, do you not?

A. No.

Q. You don't just guess at what the going rate is, do you?

A. Oftentimes it is not a matter of a guess. Shippers will ask consideration for the establishment of this or that rate, and in that case it is not customary for me to consult the Conference tariffs at all. I will calculate whether I can consider that rate as profitable to my company, or not, and if the request seems reasonable, I will extend that rate.

Q. Yes, but you, in cases like that, take the word of the [fol. 612] shipper who comes to you and says the Conference rate is thus and so, and "can you give him a better rate?"

A. Oftentimes it is not just that. A shipper will come and say, "I need this rate in order to continue business. Can I have that rate from you?"

Q. Yes.

A. He doesn't say that the Conference is thus and so, or anything about it. He just says, "I need this rate."

Q. Well, you don't imagine he comes to you necessarily without finding out what the Conference rate is in advance of talking with you, do you?

A. No. Oftentimes shippers have told me, "I have been to the Conference and I can't get any consideration there, so I come to you."

Q. Yes, he comes to you for a rate lower than he can get from the Conference lines?

A. That's right, and other times, I don't think they go to the Conference. After all, we have been there now about 20 years and they know our position well enough so that if they have some need there is no reason why they shouldn't come to us without first going to the Conference.

Q. You are talking now about shippers who are old friends of yours who want to do business with you anyway?

A. Old friends of ours, and maybe friends of old friends of ours who have heard that we try to be reasonable about [fol. 613] our rates.

Q. And in making rates for people of that decription, you always make it a point to give them the lowest rate that you can so as to return a profit to your line and a rate, at the same time, that is lower than what the Conference lines are charging?

A. As a rule on those adjustments, the request comes generally for some very specific rate. He doesn't ask me, "Is that the lowest rate you can possibly quote and earn any profit at all?" The question usually where the adjustment of rates is, and I know the Chairman of the Conference will agree with me, on a background, is that the shipper as a rule, if he knows what is going, knows what rate is required. He doesn't come, as I said before, and say "I want a rate that is lower than the Conference;" he comes and says, "I want this rate if I can get it."

Q. Well, if he is an informed shipper, he knows what the Conference rate is?

A. Yes, I imagine so.

Q. And you don't imagine that he comes to you in a state of mind that makes him willing to pay a higher rate than the Conference charges?

A. I don't believe he would, for the simple reason that he won't be competitive, perhaps.

Q. Well, competition is the heart of the whole business, [fol. 614] isn't it?

A. I think so.

Q. And it is the purpose of your line to quote rates, legal enough in themselves, that will put your company in a superior position, competitively speaking; that is correct, isn't it?

A. I don't believe I can subscribe exactly to that, Mr. Hupper.

Q. If it were not so, why should you be in the steamship business at all?

A. Well, let's put it this way: In 1947, I believe it has been said that the Conference lines on this North Atlantic berth had, I believe, the figure was 498 sailings, right?

My company, in 1947, had 23 sailings.

Now, I assume that your question contemplated that we did practically all the business, or be in a better position than anybody else by constantly under-quoting everything the Conference quoted; yet, my company had 23 sailings against our competitors' 498.

I don't know how superior our competitive position is. We did not get the lion's share of the business by any means.

Q. I was not impugning such a thought, either to you or

myself. There was no dispute that if you had 23 sailings you would get as much busines as other people who had 400. [fol. 615] A. I understood you to say that I was getting a superior competitive position, and it seemed if that would be true that I might have a hundred sailings.

Q. Well, with respect to the 23 sailings you did have, if you quoted lower rates for those sailings, your purpose, at least, was to get more cargo for those ships comparatively than people could get for other ships for which they charged higher rates. That was a fair purpose on your part, was it not?

A. My purpose was to fill as many ships as I could at rates that would show a profit.

Q. Quite right. You spoke of the very considerable number of sailings of the Conference lines in '47 as compared with your 23. Did you hear Mr. Isbrandtsen yesterday refer to what I understood to imply that Conference lines ought to restrict the number of their sailings?

A. This is rather a conjecture on my part, but listening to Mr. Isbrandtsen's testimony, and taking into account that a good deal had to do with conditions before World War II when there were more ships in the world than there was cargo to move, I understood him to mean that under those circumstances that there might be, that it might be constructive if there were to be Conferences that some thought be given rather than a whole number of operators to over-tonnage the trade and then claims some kind of right [fol. 616] to freeze things so as to stabilize that excess tonnage, that maybe some consideration be given to a sensible solution would be more than official to the steamship trade. I don't like to interpret his thoughts; I don't know exactly what he had in mind. That was my impression of it.

Q. Well, you have some thoughts of your own on that subject?

A. Yes, sir, I have some thoughts of my own, very definite ones.

Q. Tell us what they are.

A. As to what the remedy, for instance, might be for over-tonnaging the trade? Is that what you mean? That is what we were talking about.

Q. Well, if you relate your expressions now to what you understand his general intent was, give them to us.

A. I don't want to comment on his testimony, because I can't be sure, I haven't talked to him since the hearing yesterday more than five minutes. I can't be certain what it was he did have in mind.

Q. Well, let me say to you that my impression about what he said was that he felt that the Conferences were not restricted enough as to the number of their sailings, and that it would be better for all concerned if they should restrict the number of their sailings.

Did you get that impression?

[fol. 616½] A. I wasn't, very frankly, I wasn't very clear on Mr. Isbrandtsen's testimony at that point, and, at any rate, if that was his thought, I don't agree with him personally.

Mr. O'Connor: He was talking about under certain conditions, wasn't he?

The Witness: That's right, yes.

By Mr. Hupper:

Q. Well, when you talk about certain conditions, we are dealing with matters that are relevant to this hearing.

A. But if that was his meaning, I don't agree with him personally.

Q. At this moment, these last few months, what is the situation as to over-tonnaging or not in respect to the amount of cargo moving?

A. In the Trans-Atlantic trade?

Q. Yes, in these routes that are under this Docket 684?

A. My impression is that there are rather more boats than are required by the cargo moving at this time.

[fol. 617] Q. In your judgment, is that a progressive situation?

A. I am under the impression that as we get nearer a situation where commercial business is what the steamship trade is depending on and not government business, that there will be a lesser number of ships needed for the transportation in this trade.

Q. Is it the purpose of your company to withdraw in the near future any of its sailings on routes under this docket?

A. I would say that if we found we were not able to execute, not necessarily full cargo, but reasonably full ships that common sense would dictate that we reduce the amount of steamship space provided in this trade, either by lesser sailings or perhaps more ships, or whatever common sense business seemed to require.

Q. To put it the other way, do you contemplate perhaps increasing the number of your sailings, in the trade covered in this docket so as to get a better share of the total cargo offering to all these ships sailing in the trades?

A. I don't think it would be exactly right for me to here testify exactly what the plans are of my company.

Examiner Robinson: I am apparently overlooking something, Mr. Hupper, but aren't we getting a little far afield? I am not trying to shut you off if you get a connection, but I am afraid I don't see it at the moment.

Mr. Hupper: Well, I don't believe many people do, but [fol. 618] I think I do.

Mr. O'Connor: Yes, we are sitting here very patiently.

Mr. Hupper: I am dealing with matters that have already been discussed in testimony here. I am not trying to waste time.

Examiner Robinson: I am not accusing you of that, I am just trying to get the connection between it, that's all.

Mr. Hupper: Yes, sir. We heard testimony about the conferences not restricting their dealings. There are always two aspects to a subject that I know about—in competition—I gather Mr. Isbrandtsen favors the conference lines reducing sailings and he was rather plaintive because they didn't do so. But what I am coming at now is that there is another way to deal with that situation. If somebody wants to compete more actively, he can increase the number of his sailings in relation to all. That is the background that I am developing, and I am not trying to put anything in the record that I don't think is germane.

Examiner Robinson: Let's have a short recess.

(A short recess was taken.)

Examiner Robinson: All right, Mr. Hupper.

By Mr. Hupper:

Q. Mr. Crinkley, you heard yesterday the reading of an [fol. 619] item from FORTUNE magazine of March, 1949?

A. Yes, I did.

Q. Were you present when the person from FORTUNE on which that article is based called at your office and interviewed Mr. Isbrandtsen?

A. I was not present at the interview, no, sir. I was in the office. A couple of people came down. I didn't take part in the discussion, incidentally.

Q. You met those people, did you?

A. I think that I was introduced to them, but I didn't have a part in the discussion at all. I was busy.

Q. Did they talk with you, those FORTUNE people, about this matter?

A. No, sir, not at all.

Q. Only with Mr. Isbrandtsen?

A. Yes, sir.

Q. I take it you read the article a short time after it came out?

A. Yes, sir.

Q. You read that portion of it which stated, "Mr. Isbrandtsen likes to sit down with the shipper and figure out a price that will do justice that will do justice to them both?"

A. Yes, I read that.

Q. That is a short summation of the rate policy of your [fol. 620] company, isn't it?

A. Well, you see, since about 1933 or '4, in so far as line business is concerned, Mr. Isbrandtsen has not as a rule, and on very, very few occasions, none that I can remember just now, sat down with a shipper and discussed the rate; on full cargo and charter business, he has. At that time, Mr. Isbrandtsen put complete authority in my hands, for the determination of rates, and I have had that total responsibility. I have not been supplanted at any time by him or anyone else in the organization. So that when you read that, I think you have to assume that that is an expression of personal philosophy, rather than a day to day working out of the business in our organization.

Q. Well, isn't that really a summation of the way you go about fixing rates?

A. To sit down with a shipper and discuss his problems is a very definite part of our rate-making; very definite. But it is not the total.

As I understood your testimony here before the recess, you do quite a good deal of conferring with shippers to determine a rate that will suit their purposes and at the same time leaving your company a profit?

A. I do very considerable of that, yes, sir.

Q. And that conferring is not on the basis of any set [fol. 621] tariff that your company has, is it?

A. Well, it is a little bit general, that question, I think. That conferring covers a wide range of people with a wide range of problems and shipping a wide range of commodities under varying conditions. I don't think I can——

Q. Well, let me simplify that for you. Does your company have a regular tariff?

A. Yes, sir, since 1934 we were required to file tariffs with the Commission in Washington.

Q. Now, you say you *say* tariffs with the commission in Washington. Did you mean in advance of sailings?

A. No, sir, they, the requirements are within 30 days after.

Q. That is as a result of the order in Docket 128, isn't it?

A. Yes, sir.

Q. Did you attend the hearings on that docket?

A. Yes, sir, some of them—not so many.

Q. But you are aware of what the final order was?

A. Yes, sir.

Q. In other words, you advise the Commission within 30 days after seeing what the rate was on that sailing, particularly if it was a change from a previous rate, that is right, isn't it?

A. It doesn't work quite that way. What we do is file a [fol. 622] tariff and then when changes are made we file them within 30 days after the changes are established.

Q. You have a regular tariff on file with the Maritime Commission?

A. Yes, sir, in all trades where we have line operations.

Q. And the figures in that tariff are substantially below those in the conference tariffs, are they not?

A. On a substantial number of items, they are, not on all.

Q. Something was said just before the recess that I wanted to refresh myself on. Is it a basic principle in shipping, according to your judgment, in good times when there is plenty of cargo offering, you operate more ships, and in bad times when, as Mr. Isbrandtsen said, the going is a little rugged, you favor the withdrawal of ships?

A. I don't believe it is a matter of favor, I think it is a matter of necessity. If you can't get enough business in any line of business in a given time, I should think the scale of operations must be reduced, whether it is a factory or a number of ships.

Q. Are you familiar with Messrs. Vinke & Company?

A. Yes, sir.

Q. Have you visited their offices in Rotterdam?

A. No, sir, I never have. I never visited their office.

Q. Some of their people have been over here and visited your offices?

[fol. 623] A. On two occasions—two is the total.

Q. What was the latest time?

A. Since the war I believe it was about two years ago; not Mr. Vinke, but one of the men in his organization came over.

Q. No doubt about his being a representative of Vinke, was there?

A. No, sir.

Q. You are doing business through them?

A. Yes, sir.

Q. Now?

A. That's right. They are our agents for Holland.

Q. Yes. Are you running a contract rate system out of Holland?

A. No, sir.

Q. Did you hear the reference made here yesterday to the notice to shippers Messrs. Vinke had issued on your behalf?

A. Yes, sir.

Q. Have you got copies of those letters and circulars in your company's files?

A. I am not certain that we do. I suppose our firm is like a good many others, from time to time we debate how long we should keep paper that accumulates around there

by bale, like every other office, and I don't think that I have got in our files 10-year-old material that is not from legal papers like bills of lading or manifests, or something of that kind.

[fol. 624] Q. Would it be convenient to you to have a check made to see whether you have those documents?

A. (The witness made a note of the request.)

Q. I don't want you to turn your organization inside out.

A. I am positive we can check, but I am rather certain that we won't find 1939 material there.

Q. Some time at your convenience before this hearing is over will you have somebody in your office just check that?

A. Yes.

Q. So as you can tell me?

A. Yes.

Q. Do you have a personal recollection of the efforts of your company that in '39 to institute a contract rate system out of the Continental——

Mr. O'Connor: I object to the question on the ground it assumes something that is not in evidence. There is nothing, there is not one word from any statement of Vinke yet in evidence in the case whatsoever.

Examiner Robinson: Read the question, will you please?

(The pending question was read by the reporter.)

Examiner Robinson: That hasn't anything to do with the letters, it is his impression. The question is quite all right. It is not based on these at all. He just wants to know if he has a personal recollection.

[fol. 625] Mr. O'Connor: That is in 1939.

Examiner Robinson: Sure.

Mr. O'Connor: Well, I submit, then, if the Examiner thinks that date of 10 years ago and is material and relevant, then the question would be proper.

By Mr. Hupper:

Q. Do you have a personal recollection?

A. Do I have a personal recollection about the beginning of a contract system out of Holland in 1939?

Q. About the efforts to establish and through your agents, Mr. Vinke & Company?

Mr. O'Connor: Well, now, I object to that, Mr. Examiner. It is clearly improper. It assumes that there were efforts by Vinke & Company to establish a contract rate system out of Holland. There is no proof whatsoever as to that.

Examiner Robinson: No, I think that is perfectly improper. He can ask him if he had any, but I think Mr. O'Connor is right on that.

Mr. Hupper: Well, I think Mr. O'Connor is not so sympathetic with the form of my question or the purpose of it. He can make any arguments he wants to. I will ask you in another way, Mr. Crinkley.

By Mr. Hupper:

Q. Did your company, to your knowledge, in 1939 or [fol. 626] shortly before communicate with your agents, Messrs. Vinke & Company, and request that they explore the situation with regard to the securing of contracts in a so-called contract rate system?

A. I am very well in recollection that we constantly now and then, carried on correspondence with all our agents as to how they might secure business for us, and accordingly, at that time, I am quite familiar with the fact that we carried on correspondence with some discussions about contracts.

Q. You heard the items that I read to Mr. Isbrandtsen, did you not?

A. From those letters of Vinke & Company?

Q. Yes.

A. Yes, I heard you read those.

Q. Did your hearing on the reading of those items refresh you in any way as to what was done from this end by your company with regard to the securing of exclusive contracts from shippers?

A. Did the reading of those letters refresh my mind as to what was done? Yes, I have a pretty fair recollection of it.

Q. Well, tell us what your recollection is.

A. As to the establishment of contracts from Holland?

Q. Yes. According to what you heard read.

[fol. 627] A. Yes. I would have to say that we tried in a limited way the use of contracts with shippers. There is

no similarity practically speaking whatsoever between such contracts we had with the thing that we call exclusive patronage, contract rate system. I would like to, if I am going to discuss this question at all, set forth some of those differences. For instance, it occupied about a third of one page, double spaced typewriter.

Q. Have you got a copy of that?

A. I don't have it with me, I am sorry.

Q. Is it in your office?

A. I am sure we must have one.

Q. Will you kindly bring it this afternoon?

A. I don't know whether I can get it this afternoon. I already instructed somebody in the office to get it. It is about a third of a page as against about a full page of very fine printing on one of your contracts. Our contracts were actually contracts of carriage. This contract requires the conference to carry no cargo. It is a different thing. There was no penalty, no reprisals whatsoever. They began simply as a confirmation when the establishment of some special rate had been established in order that cargo might move. It was customary for me to confirm that, and a confirmation was along the lines, generally speaking, that we confirm we have extended this rate, and you confirm it is your purpose [fol. 628] to ship with us.

As time went on there we extended the use of those confirmations, and more or less put it in a stencilled form, the commodity, the rate, the protection period, and those things. We finally found we almost had to use something of that kind, because in a great many different occasions, I can't tell you how many, but we had established rates, not necessarily based on any comparison of conference rates, but in order that a shipper might accomplish business, after it was established and he began to ship, we found that the conference lines as a matter of competition would invariably swoop down on that and not only offer a lower rate, offer it with a contract that would tie the man up. It wasn't that we didn't think that the conference might come along and compete and get some of the business. I can't quote any lower rate than other steamship people, we have no magic over there, but they always came along with that and tied it up so that from that minute on we didn't get any of the business. So in fighting that kind of a proposi-

tion there, I sought to have the shipper confirm to us more or less in the way of an agreement that where we had established the rate that we could have some reasonable assurance of his business. It was that form of contract that was used. Mr. Isbrandtsen is not very familiar with it. I had to work it out according to my responsibility in the main-[fol. 629] taining of traffic, etcetera, and they were used in a limited way in the Far East trade, and to some degree in the Trans-Atlantic trade.

Until 1939 and, I believe it was in the fall of 193-, my company did not arrange westbound sailings in the Trans-Atlantic trade. And when we did begin those for the first several months, we didn't load westbound in continental ports, we loaded to some UK ports. So it was well up until 1939 until we began our westbound sailings, and when we did we found the same situation prevailed, whatever rate we might quote, the conferences quoted the same rate, or lower, which was their privilege, we had no objection to that, but all we tied up, and coupled with this exclusive patronage conference contract, so that when that was done, then we were frozen completely out of that. And so in a limited way we began to offer the type of contract that I have just mentioned.

You can see that in January something was said about it. War broke out in Europe in September 2, 1939, and so far as we are concerned the development there was, it didn't go very far at all, it was in very, very limited use. I don't recollect, I doubt that there were a dozen ever fixed, and that is the situation as regarding these matters, that the letters are concerned with, that you referred to.

[fol. 630] Q. But at that time you did consider it proper in the sense you have now decided to have what might commonly be called an exclusive patronage contract?

A. No, I am not trying to be facetious or to make a smart answer there at all. The contract that we used by no stretch of the imagination could be compared with what you, all of us know as an exclusive patronage conference contract. It just simply is not the same thing.

Q. Well, it was a different form of exclusive patronage contract?

A. Now, let us say exceedingly mild, modest form, no penalties, no reprisals, no threats. We have never had any-

thing of that kind. Mr. Isbrandtsen was emphatic on it, and I can be even more so since I handled it.

[fol. 631] Q. Well, if you exclude the reference to reprisals and threats, the basic purpose of the contract was the same as these contracts we are talking about in this proceeding.

A. Well, I don't admit that. I contend that the purpose of the exclusive patronage contract rate system is to exclude competition or descry it, and the purpose of any contract we had there was never to increase rates, to hold rates up, or to destroy anybody; it was just to get some business. There is a difference there that cannot be overlooked.

Q. Well, you are talking about to get some business; you are talking about competition, that's all you are talking about.

A. Yes, sir.

Q. As I understand those contracts, what was contemplated by your procedure in the early months of 1939 was the signing of contracts for all the shipments of certain persons for a consideration of more attractive rates. Here is an expression "whether you are willing to close a contract with our principals for all your shipments."

Now, you wouldn't go so far as to say that a shipper or exporter, or whoever he might be, signed the contract with your company covering all his shipments for certain considerations, lower rates, as I gather, would be free to depart from that contract and ship with another line; you don't contend that, do you?

[fol. 632] A. No, I don't contend that he would consider himself free, having made an arrangement of that kind.

Q. In other words, you would stand by the proposition that when a man makes a contract he should live up to it?

A. A good contract should be lived up to.

Q. Quite right.

A. A good contract.

Q. Your contracts were intended to be good ones?

A. Yes, sir, and these others are bad ones.

Q. In the sense that they gave the shipper lower rates and they insured to you all his business for a period?

A. In the sense that the shipper got lower rates with ample consideration given for such times as, for convenience

and other reasons, he couldn't hold his shipments for us. They were left very, very free, without even consulting us, going through some rigamarole about calling back 48 hours, to use another line. It was a very simple, very practical, very modest, mild affair all the way through.

Q. What you are saying now is that you were able to figure you would be able to swing those contracts with less attention to detail than prevailed with members of the large Conferences?

A. No, sir; I am against any general contracts of that nature, and very much so, and have been, was back when I was in the tobacco business, and ever since I have been in [fol. 633] the steamship business, and only considered ever to use them because of the tactics by the Conferences.

Q. In other words, it was a means by which you carried on your competition?

A. It was an experiment, I will say, and I will add since the war we have had three full years of shipping since the war and we have not used the system any where or any place, and it is not my intention to re-establish it.

Q. You rely entirely on lower rates?

A. We rely entirely on being able to meet our own in a competitive way, to give due consideration to the needs of shipping, and to reasonable use and common sense in our dealings with shippers, and on rates. We depend on that and on good solicitation, hard work, and so forth and so forth.

Q. Well, being reasonable and having common sense in dealing with shippers implies that you give the shipper a lower rate than he gets somewhere else?

A. Let me say that I have no reverance whatsoever for a Conference rate as such. I don't believe the time has ever been in the commerce of this country when anybody could say that the Conferences, any one of them or all of them, have set up a tariff where the rates are very reasonable and take into consideration all of the factors of trade. I don't believe anything like that has ever happened, and accord- [fol. 634] ingly, for somebody to assume that because a Conference has got a rate here, and I quote this, that we are necessarily cutting their rate. That is just foolishness.

Before the war, the rate on leaf tobacco to Hamburg and

Antwerp was 50 cents a hundred pounds with independent competition. On January 1, 1948 it was $3.20. Then the JETA came in the market with 30,000 tons of tobacco and asked for a quotation. The Conference quoted $3.20. My quotation was $2.25, $20 a ton less.

Now, mind you, to England at the same time, where it is more expensive to carry tobacco since the lines have to deliver to the government warehouses, $2 was the rate. So to England high ports it was $2, Hamburg and Bremen $3.20, Antwerp and Rotterdam $2.90, and for somebody to say that rate is reasonable and if I quote under it I am a chiseler, it is foolishness.

If I quoted the same thing, I would be guilty of embezzlement. I quoted two and a quarter based on American operation, high cost operation, with a good profit.

Now, what could be done with a cheaper operating foreign business is something else. Two and a quarter was a good rate, very satisfactory. I quoted it. We carried a substantial part of the business. The Conference met the rate. The taxpayers of this country saved $600,000 on that transaction because of good, clean competition that was there [fol. 635] working, not chiseling the Conference rate, but setting rates that were very fair and quite profitable.

Now, that illustrates the principle that I have.

I will never agree that any Conference tariff rate has to be regarded as something holy, with reverance, to be right, if anybody quotes under it they must be chiselers or crawling under an umbrella, or what-have-you.

I try to fix it so that our rates are reasonable, and when we get requests from shippers we give reasonable consideration to it.

When I came with Mr. Isbrandtsen, I told him "This is the first time I have ever had any chance to talk with any ship man about rates. I have had applications before various Conferences for rate adjustments go from one year to another, and I don't even get answers to my letters, I can't talk with anybody. You come and say you are willing to talk with people and see what the trade requires."

That attracted me, and I wanted to be with that kind of a setup, and I have been, and that is the whole philosophy I have with it.

Q. Well, the truth is, putting it very simply and bluntly, your rates are lower than the Conference rates, irrespective of whether they are to be described as cut rates or not?

A. Not at this particular time. The Conference rate on leaf tobacco to Antwerp and Rotterdam is $2 a hundred [fol. 636] pounds, to Germany two and a half, and that is my rate and has been for months.

Q. You are talking about——

A. I am talking about freight rates.

Q. Well, the situation you described just a moment ago, you were objecting to being called a chiseler and all that sort of business.

A. I don't particularly object to it.

Q. There is no suggestion of that here. My proposition only is in the great majority of instances the rates of your line are lower than those of the Conference?

Mr. O'Connor: Oh, I object to that question. It has been asked ten times.

Mr. Hupper: There is no indication in that—I am getting at facts——

Mr. O'Connor: I object to the question. It has been asked ten times, and in every instance the witness has answered, "No, not in the majority of cases are our rates lower than the Conference," and the mere repetition of questions I submit should not be permitted to make a record. The witness has said, "In some instances, maybe a substantial number of instances," but he has denied at least ten times that in the majority of instances the rates were lower than the Conference rates.

Examiner Robinson: My recollection is that he said they [fol. 637] were generally lower.

The Witness: I said that our rates are lower on a substantial portion of the commodities where tariffs——

Mr. O'Connor: Do you make a difference between "substantial" and "majority" number?

The Witness: Both of those terms there are somewhat general in nature, so I don't know what you are talking about when you say "majority" if you are talking about 2,000 items. It is too general a question. I don't like to try to be so exact with a general question of that nature.

I was simply trying to point out that we try to use some common sense with our rates. There was this tobacco rate which, in my oponion, was far, far too high, and it has now been brought down to what I consider a fairly reasonable level, and we are going along on the same basis. I am offering nothing under the Conference, nothing.

By Mr. Hupper:

Q. Your line does not have a subsidy, does it?

A. No, sir.

Q. Have you ever considered applying for one under the Merchant Marine Act?

A. No, sir. Mr. Isbrandtsen has said that he felt that if there was to be a subsidy that it should be of a general nature such as, for instance, supplies to farmers, but we have made no application, nor considered making an appli-
[fol. 638] cation under the 1936 Subsidy Act.

Q. Do you know whether or not any of the American lines in the Conferences have subsidies?

A. You now refer to the Trans-Atlantic trade?

Q. Yes, in trade covered by this docket.

A. I don't believe that any of the lines serving Antwerp, Rotterdam, and German ports have subsidies. I don't understand that they do. There have been various meetings down where Black Diamond was applying, and U. S. Lines was applying, and Bernstein was applying, but it is my understanding that no subsidy has been granted as yet except to one, the Southern Group, Stachan outfit——

Mr. O'Connor: South Atlantic.

The Witness: South Atlantic Steamship Company. I believe they now have a subsidy, and they serve Norfolk and Newport News, which are ports we serve.

[fol. 639] By Mr. Hupper:

Q. Is it your position in this matter, Mr. Crinkley, that shippers in general, those who may wish to have these contracts with the conference members be prohibited from having them?

A. I heard similar questions asked yesterday, and was a little bit puzzled by them. My company is not opposing

the wishes of the shippers, generally speaking, in any manner. I think that is a rather backward way of describing this contract situation. I deny that generally speaking shippers are crying and begging for the contract. There may be some few that have some particular reasons of their own, I wouldn't attempt to say, but we are not saying in effect that shippers shall be denied anything; we are saying to the lines we shouldn't use this unlawful illegal contract system which would in effect make it impossible for us to go to firms that would favor us with a share of the business and get any. In this period up to the present time the Trans-Atlantic trade, we have had some General Motors business—all of it, no; most of it; no, but some of it, yes. Under this contract system I suppose General Motors would feel that our services were insufficient, they would be forced to sign this conference agreement, and then I couldn't get any business from them, and we are against it from the standpoint of the operators. You can say, "Well, [fol. 640] in effect that means you are against the shippers." No, we wouldn't say that at all. We are fighting the conference use of this practice. I presume that some of the people that may deal with groups, whether you want to call them cartel groups or monopoly groups, they may prefer it for all I know. I don't know that. But public policy is along a different line.

Q. Well, just suppose General Motors for one, you say probably only a few interests any way want them, but suppose *they decide that* they decide that they do want them, they want to deal with a conference line rather than deal with you. Isn't it your proposition that they shall be forbidden to have those contracts?

A. No, sir, I would understand if this, what we call exclusive patronage conference contracts were prohibited, that in the event any shipper made up his mind he wanted to favor the group, that there would be nothing in the world to stop him there from making a proper and good contract with them individually or otherwise.

Q. Well, your proposition, then, is that you should be able to dictate the form of the contract which you would call proper?

A. No, sir, our position is the laws ought to be made so that this thing that is in violation of the law, we should

[fol. 641] stop it, and if there is some good policy reason why it should be carried on, proper legislation ought to be sought so that the laws are compared with proper acts of these groups. That is my thought, and it has been that way now for about 29 years. I haven't changed a particle on it, and I believe with all my heart that the thing is unlawful and illegal and it ought to be stricken out there, and then if it is sought to bring it back on policy grounds, let it come in a decent, ordinary, proper way. It has nothing to do with some advantage in the contract or being able to dictate to the shippers that they can't do this or that, that has nothing to do with that at all.

Q. Well, the substance of your thought, whatever the reasons for it are, is that shippers should not be entitled to receive carriers contracts in the form that are involved in this Docket 684?

A. I would say that by all means, yes. They are not entitled to receive contracts of this particular form because they are illegal and they are unlawful, and so far as I can see it, if the facts were really substantially developed in these contracts executed, I am not positive but what the shipper has some responsibility for violation of the laws as well as the conference groups. I am not sure about that.

Q. Have you personally investigated the law on that subject?

[fol. 642] A. I have been reading that law back and forth for a great long time, but I suppose the shippers' position is not brought out in there. That would appear in anti-trust and other matters, and I am not familiar with those. I am just saying it is just an opinion of mine, I am not sure at all that I am right.

Q. But you are making contentions along that line?

A. No, sir, I only brought that thought forth; I believe in this hearing. So far as I know, that was the first time I ever mentioned it. I just wonder about it sometimes, but I haven't investigated it.

Q. Well, you don't suggest, do you, that the conference contracts with shippers are directed against your company?

A. I think they are directed against my company, and any and all independent companies, people who are not members of the conference groups.

Q. Well, you give a substantial maritime service and so do some of the other independent companies. What is there to prevent you and those others having an exclusive patronage contract system which would assure a considerable amount of business to your lines? You say you have a great many friends among the shippers.

A. I don't know whether you refer to these contracts as individuals, or perhaps the independents might have a contract—what is it you refer to there?

[fol. 643] Q. What I am contemplating is the possibility that your line and other independent lines, and there are some, would be entitled if they so chose to have the contract rate system with shippers and could give a very substantial service which doubtless many a shipper would be satisfied with—not every shipper shipping all the time?

A. My company is not willing to enter a conference with conference lines or conference with other independent lines. We prefer to be independent of the other lines, whether in the conference or other independents. We don't want to make our arrangements by agreements with others.

Q. Well, what you are saying in substance is that you earnestly prefer to remain independent, but at the same time you wish to avoid what might be called the economic consequences of that position, yet, you want to forbid shippers and other carriers from making contracts of the kind you are talking about here, because you say the existence of those contracts tends to cut down the amount of business that you as an independent should get. Is that a correct summation of your position?

Mr. O'Connor: It is a summation.

The Witness: That would hardly——

Mr. O'Connor: Just a minute. I might as well find out if it is a question. I will admit it is a summation. But do [fol. 644] you understand it sufficiently?

The Witness: I understand it sufficiently.

Mr. O'Connor: Go ahead, then.

The Witness: I understand your question in essence is we want to be independent but avoid the consequences of being independent.

By Mr. Hupper:

Q. That is a very good way to put it.

A. That is not true. I will say it in this sense. Congress by the Bullwinkle Bill has allowed railroads to form a price-fixing conference——

Mr. Hupper: Well, is that involved in this case?

Mr. O'Connor: It is just as much involved——

Examiner Robinson: We can go ahead. I don't know what he is going to say.

Mr. Hupper: The Bullwinkle Bill can scarcely be relevant to shipping on the ocean.

Examiner Robinson: Go ahead. Finish.

The Witness: Mr. Hupper asked me if we didn't want to be an independent and avoid the economic consequences of that, and my answer is no, that is not our point at all. We want to be independent and we are willing to take the consequences. Now, we see here in this trans-Atlantic trade since the war stopped these 12 or 13 conference lines. We were the only independent until some months back, I think [fol. 645] about 10 or 11 months backs, when the Meyer Line came into the picture. I just want to follow along. We were openly competing with these other lines, asking no odds of them one way or another. So the economic consequences of being independent, we are perfectly willing to assume. We are perfectly willing to meet any lines or groups of lines in a competitive position. We are not seeking to enjoy some exclusive arrangement where we might have a particular hold. I said before I can't quote any cheaper rate than other lines, our costs are about the same; we try to make them economic, our overhead problem is about the same. I can't profitably quote any lower rate than any other lines or groups of lines. We are perfectly willing to meet them on a competitive basis anywhere, anytime. We always do so. I can't answer that question yes, we want to be an independent but escape the economic consequences of such. That simply is not the fact.

By Mr. Hupper:

Q. Now, you want to tie other people's hands versus competition, don't you?

A. Far, far from it. I want to leave the conference perfectly free to compete with us every day in the week. We just don't want to fix it so that they have the power to control the traffic of American shippers.

Q. Well, you are aware of that provision in the confer- [fol. 646] ence agreement, I take it, that I am talking about now, the agreement of 1935, as amended at this time, that entitles the conference lines to meet competition in any proper way they choose, even by the reduction of rates as against the lower rates, disturbed rates, some people call them, charged by other lines, not members of the conference. You are familiar with that general provision in the conference agreement, are you not?

A. Oh, I am familiar with provisions of the 1916 Shipping Act that provided for just that, that is, that they can by agreement fix rates and fares, and passengers, and regulations in the meeting of competition.

Q. Well, apparantly you didn't get my question, because I was referring to the conference agreement made in 1935 as amended up to 1948, and I think probably I had better read it to you.

A. No, wait a minute, I think I know what you are talking about. You mean that the 1935 agreement carried a provision for contract and non-contract rates.

Q. Yes, and it carried other provisions. I will read the section to you so you won't be in the dark, if you will pardon me just a second.

A. I want to answer your question before you do that, Mr. Hupper, by saying this. We now, I believe, are on the mail- [fol. 647] ing list of the Maritime Commission, so that we get the material they issue generally for publication. Prior to the war we were not on such list, and frankly, I didn't know such a list existed. Until in the summer of 1947 I contended in some of the so-called public addresses that no conference had ever filed an agreement with the Maritime Commission providing for the use of contract and non-contract rates. In other words, I am saying I didn't know of the existence of that agreement in 1935, that is, the provisions of it.

I have learned later how I could have access to public records of the Commission, and I have sought since that

time to keep myself informed. We get, I believe it is from the Commission or some service bureau every day or so, a list of actions, of papers, filed with the Commission, these public releases from the Commission.

[fol. 648] The notice that was sent out in January 1947 concerning the amendments of these agreements, and where a contract-non-contract rates were mentioned, there was nothing in the public notice to indicate there was anything like that there, and I still went on after that time contending that no Conference had ever filed an agreement with the Maritime Commission providing for the use of contract-non-contract rates.

I am saying all that, just to establish with you a very simple answer to your question. The answer is no.

Q. I think my question is not yet clear to you. Speaking of something you just mentioned now, about which I did not ask you, the files of the Shipping Board Bureau and the Maritime Commission later, have always been open to shipping people to examine the documents on file, have they not?

A. I wouldn't be able to answer that, either, Mr. Hupper. In the 1930 period I gave relatively little attention to Washington, and, frankly, I didn't know what was available down there, and what was not available. I didn't understand that a great many of these papers were available for public inspection and public reading.

Q. Well, aside from that, you did know that the Conferences existed?

A. Oh, yes, sir, by all means.

Q. You did know what they were doing?

[fol. 649] A. Yes, sir.

Q. And you didn't interest yourself for any reason to ascertain specifically why they were doing certain things?

A. I don't believe I understand quite what you mean by that, Mr. Hupper.

Q. Well, in respect to contract rates?

A. Well, I——

Mr. O'Connor: He doesn't understand the question. You asked him why they were doing it, the operation of their mind. He can't go into that.

By Mr. Hupper:

Q. You say that you did not know until about 1947 in Conference Agreement 4490, which was approved August 24, 1935, there was a provision, "The Conference may provide specific contract and non-contract rates"?

A. No, sir, I didn't.

Q. "In an effort to stabilize rates," and so forth?

A. No, sir, I did not know that the Conference Agreement contained that provision, and my lack of knowledge in that respect could be confirmed by the Maritime Commission.

Q. But you say that over a period of many years, you stated there was no agreement on file with the Commission that contained any such provision?

A. Yes, sir, because there had never been any publicity given to any such agreement.

[fol. 650] Q. Well, that was a very strong statement for you to make if you hadn't examined into the subject yourself, wasn't it?

A. Yes, sir, it was. I agree to that now.

Q. You just assumed that, and you went around saying it?

A. I assumed it for the 12 years I have been exporting and for the 18 years I have been engaged in the steamship business competing with various of these Conference groups, keeping pretty well informed what is going on, certainly reading such papers as the Journal of Commerce that generally reflects anything of general note that comes in. I have never seen any mention of any such agreement filed with that provision.

Q. Well, might not there be another explanation in your own mind to the effect that after all so-called contract-non-contract rate system is merely one form that rates take?

A. No, sir, not at all.

Q. Therefore, you wouldn't expect to find any provision in the Conference Agreement about it?

A. No, sir.

Q. That thought never entered your mind?

A. No, sir. In the summer of 1947 the Mediterranean Conference filed an agreement which we had a copy of sent to us, that contained provisions for the use of the contract

system. I immediately wrote to the Maritime Commission [fol. 651] and protested it and said that that was the first time that a Conference had filed an agreement containing that provision. I had some correspondence with them, Mr. Andrews, some correspondence with them at that same time. Even then the Commission didn't come back and say, "You are mistaken about that. There are agreements on file here with such provisions in them."

Q. I show you a letter dated August 27, 1935, on the letterhead of the Department of Commerce, U. S. Shipping Board Bureau, addressed to the North Atlantic Continental Freight Conference, to which is annexed a document entitled "North Atlantic Continental Freight Conference Agreement," and I ask you to look at the same.

A. (Examining the document.) You want me to read this, as well as this (indicating document)?

Q. You can scan through the annex, if you will, particularly the last two paragraphs on the first page. Those are the only ones I am going to refer to.

A. I read that, sir.

Q. Thank you.

A. That is those two paragraphs in the letter.

Examiner Robinson: Would it be convenient for you to adjourn for lunch now?

Mr. Hupper: That is all right.

Examiner Robinson: Suppose we adjourn until two [fol. 652] o'clock.

(Whereupon, at 12:30 p. m., a recess was taken until 2:00 p. m.)

[fol. 653] AFTERNOON SESSION

Examiner Robinson: Let's begin, gentlemen.

MATTHEW S. CRINKLEY resumed the stand, having been previously sworn, and testified further as follows:

Direct examination (continued).

By Mr. Hupper:

Q. Mr. Crinkley, in the morning session I handed you a copy of a North Atlantic Continental Freight Conference Agreement in the form as approved by the Shipping Board Bureau on August 24, 1935. You glanced at that at my request, did you not?

A. That is right.

Q. Particularly, the last two paragraphs on the first sheet?

A. Yes.

Q. Perhaps I didn't ask you to look at the conclusion of the paragraph on the first sheet, which appears at the top of the second sheet. Will you glance at that (handing document to witness)?

A. (The witness complies.)

Mr. O'Connor: Mr. Hupper, is it the same as Exhibit 1-C in evidence?

Mr. Hupper: I am having that checked right now.

[fol. 654] Mr. O'Connor: Exhibit 1-C in evidence is the Conference Agreement No. 4490, of 1935.

Examiner Robinson: As brought up to date?

Mr. O'Connor: Yes. There is one modification marked separately.

Examiner Robinson: I mean, conceivably that may be a different thing. I don't know.

Mr. O'Connor: The original No. 4490 is Exhibit 1-C.

Examiner Robinson: That is what I understood.

Mr. Galland: As amended to——

Examiner Robinson: There might be something in the original agreement of 1935 that has not been brought forward.

Mr. O'Connor: That is solely the original?

Mr. Hupper: Yes.

By Mr. Hupper:

Q. I now hand you, Mr. Crinkley, Complainant's Exhibit 1-C, and ask you to note the two paragraphs that I have indicated in brackets on page 4 thereof.

A. (The witness complies).

Q. Mr. Crinkley, you have just read those two paragraphs, Exhibit 1-C, page 4. Do you find them in the same language as the two you had in the original 1935 document? [fol. 655] A. Yes, that is right.

Q. Those two paragraphs, in part, read as follows:

"In the emergency of disturbance of rates by non-members which, in the unanimous opinion of either group, as hereinafter provided, warrant greater flexibility of rates."

Have you any idea what is implied by the words "greater flexibility of rates"?

A. I would presume from reading that that the sense is that while ordinarily the members of the Conference are bound to quote the same rates as the Conference has decided on, that under certain conditions individual members might be left free to take whatever action was necessary or desirable in rates.

Q. So that the Conference lines do, by the expressed terms of their agreement, have the right to meet competition of outsiders, so-called? That is what is implied in the phrase "greater flexibility," isn't it?

A. Provided an emergency has been declared by unanimous decision of the members.

Q. Quite right. That is what that language provides?

A. Yes.

Q. I take it that your company is not inviting, or even eager to have further competition through what is described in that agreement as greater flexibility of rates? [fol. 656] A. I don't think we have any right to expect to be in a trade that may not arrive at a condition where there isn't free competition between the people engaged in that trade. We have lived through some very competitive periods.

Q. I intended to ask you this morning, but the question was collateral at the moment—how large an operation is the Myer Line, the trade covered by Docket 684?

A. It is my understanding some months they have two sailings a month, and other months one sailing. The vessels they use, I believe, vary in size. Some are small, say 4,000 and 5,000 tonnage, and possibly some are larger.

Q. Is the Myer Line understood by you to be a fairly strong company?

A. I understand they are. I don't know a whole lot about them, but I understand they are a strong company.

Q. How recently have they come into this trade covered by this docket?

A. I think they came in last summer.

Q. They have been operating regularly—I mean, twice or once a month, as you said?

A. Yes, that is my understanding.

Q. Do they compete wth your company at all?

A. Very much so.

Q. Do they cut your rates?

A. Well, I don't know whether you would say they cut [fol. 657] our rates or not. They have established some rates that are lower than ours.

Q. And when they do that, do you establish rates lower than theirs?

A. Oh, no.

Q. Every once in a while?

A. No.

Q. You always keep your rates up above theirs?

A. No, I wouldn't say we keep them up or go under them, or quote the same rates, necessarily, in all occasions. We meet each situation as we find it. Some of our rates are higher than theirs.

Q. At the same time of shipment?

A. Yes.

Q. And some of your rates are lower than theirs?

A. I don't believe so. I don't know absolutely their rate schedule, but I doubt very much if any of our rates are lower than theirs.

Q. At any time, so far as you know?

A. At any time, as far as I know.

Q. How many sailings, or what is the frequency of sailings of your line at this time?

A. It is a minimum of two a month. In some cases, we

have had, for instance, five in two months. In 1948 my company had 36 sailings in the Trans-Atlantic trade.

Q. You mean the trade covered in Docket 684?

[fol. 658] A. That is right. A good number of sailings—I am sorry I can't give you the exact number—carried United States Army cargo to Germany. Our schedule is twice a month as a minimum.

Q. In other words, an average of 24 a year, but you say you had—was it 38?

A. Thirty-six in 1948. But I think probably most of those sailings over our two sailings a month involved to a large extent Army cargo.

Q. Some of those were chartered ships sailing in 1948?

A. Yes, a good many of them.

Q. In 1947, I think you said you had 23, is that correct?

A. That is right, 23.

Q. How do the sailings of 1947 and 1948, and the average of two a month that you are now conducting, compare with the sailings you had in 1938 and '39, up to the time you had to suspend by reason of the war?

A. In '38 and '39, our sailings were definitely two sailings a month. I explained this morning the ships were quite smaller, but that was the schedule, two sailings a month.

Q. So, substantially speaking, the two sailings a month now are the same as you had back in the late '30's?

A. Yes, but the difference is we are using 10,000 ton vessels now, and, in addition, we call at Hamburg and Bremen, which we did not do in '38 and '39.

[fol. 659] I might say in the North Atlantic trade we are using only American vessels. I heard the question asked of Mr. Isbrandtsen, who is probably not as familiar with line operations. But in this trade we use only the vessels that we own and those that we charter.

Q. In the conduct of your business, do you avail yourselves of the service of brokers at all?

A. Yes.

Q. Is that quite general with your company?

A. Yes. With every line company in business, I suppose.

Q. Pardon?

A. With every line company in business, I suppose.

Q. Do you know whether the Conference lines use brokers?

A. Yes, I am sure they do.

Q. How are you sure of that?

A. Well, just take one thing back in my experience when I was an exporter—that is, I controlled shipments. I made bookings through freight forwarders and brokers with the Conference lines.

Q. Generally speaking, in normal common carrier freight the services of brokers are necessary, are they?

A. I think there is some question about that, but I should say generally speaking, yes, I believe they are.

Q. Certainly the brokers think they are necessary?

A. Yes, sir. A good many shippers located in the in- [fol. 660] terior could dispense with the services of freight forwarders, but undoubtedly it is much more convenient, and they perform a useful service to those shippers.

Q. Do you class freight brokers with freight forwarders?

A. Yes, I do, in line service particularly. I class freight forwarders and brokers as the same, because freight forwarders in overseas shipping business do act as freight brokers. They perform a forwarding service for the shipper in so far as the carrier is concerned. Their service is as a broker.

Q. In other words, they really act in two capacities?

A. They do.

Q. When you say the carrier acts as a broker, that means they secure the business from the shipper for the carrier?

A. I don't know whether I said it exactly that way. They book the cargo for the shipper, just as, for instance, a commodity broker may sell for a concern or buy for a firm. In that case, they buy space for the shipper.

Q. Well, does that mean that the broker who attempts to act in the sense you just now described, he comes to your company as a carrier to book space for Shipper X, we will say, in Chicago?

A. Yes.

Q. And then when the shipment of the designated goods for which he has booked space with your company arrives [fol. 661] here for the purpose of being loaded on your ship, what additional service does the forwarder and/or the

broker perform, and for whom does he perform that service?

Mr. O'Connor: Now, Mr. Examiner, I have tried to be patient with this line of questions.

Examiner Robinson: I am just as patient as you are. I am wondering what it is coming to.

Mr. Hupper: You will find out presently, and I want to remind my friend, Mr. O'Connor, that this is my witness, and I am trying to bring out what I think is relevant.

Mr. O'Connor: I hope you don't delve too deeply into all these collateral views and experiences, and things not pertinent to the record. He is a nice man, but there is some limit as to relevancy and pertinency.

Mr. Hupper: I am happy to have him here. I intend to have this record complete and as full as I can.

Mr. O'Connor: It is going to be full all right.

Mr Hupper: You weren't interested in having any record, and I can see why you object to my having one, and I am going right ahead. You rested yesterday, and you can keep on resting.

Examiner Robinson: I have the same idea as you so far. I don't see the relevancy. Let's go ahead anyway.

A. When a shipment arrives in New York from Chicago [fol. 662] that has been booked by freight forwarder or broker, whichever you want to call him, acting for the shipper, he arranges the delivery of that cargo to the steamship piers, and he usually does other things for the shipper, such as making up bills of lading, attending to marine insurance, sometimes handling the banking. Those particular services are all for the benefit of the shipper. It is a benefit to the carrier to have someone interested in seeing that the goods are promptly delivered from the railroad carriers or motor carriers, and someone who can act as a representative of the shipper in the event of dock receipts, and the question of weights and measurements, and so forth.

By Mr. Hupper:

Q. Does that forwarder or broker gentleman receive any compensation for his services?

A. Always, from all carriers.

Q. From all carriers?

A. From all carriers in this State, anyway.

Q. Well, doesn't the shipper in Chicago and elsewhere in the hinterland pay anything?

A. I understand it is customary with a freight forwarder to charge the shipper the services they render for the shipper.

Q. So the shipper does pay him something, does he?

A. Yes, as a rule, I understand they do. I am not fa-
[fol. 663] miliar with all the arrangements between freight forwarders and shippers, however.

Q. Now, are the services of freight forwarders or brokers performed substantially the same in the case of all shipments of a given commodity, *o*rrespective of the line over which the shipments move?

A. Well, it could be assumed. I don't have any direct information about what service is performed by freight forwarders and brokers to other lines.

Q. But you know of no different services that the freight forwarder or broker performs for Line A than for Line X?

A. I don't know of any, no.

Q. You probably would if there were any?

A. I presume some of them would call it to my attention.

Q. Do you know what broker's rate your line customarily pays these forwarder-broker gentlemen?

A. Yes. Two and a half per cent of the gross freight.

Q. Of the full freight?

A. The gross freight.

Q. You mean the freight your line charges?

A. Yes.

Q. It is always limited to 2½ per cent?

A. Yes. We don't pay over that.

Q. Never?

A. Never.

[fol. 664] Q. You never pay 5 per cent?

A. Not on common carrier, not on line business. On charter, we may.

Q. Sometimes 10 per cent?

A. I think in the charter business the commission is a

wide open question. It depends altogether on rates and many factors. But on line business our rate is 2½ per cent.

Q. When is that paid to the broker or forwarder?

A. After the shipment is made and the freight money is collected.

Q. The freight money is collected in advance?

A. Most shipments go prepaid, and are collected in advance.

Q. Do you know the brokerage rate paid by the Conference lines to the forwarders and brokers?

A. So far as the brokers in this country are concerned, I understand it is 1¼ per cent.

Q. So your line pays twice what the other lines pay?

A. Yes, in so far as the brokers in this country are concerned. I also want to explain what I mean by that. When I first began to have authority in this matter, it was brought to my attention that on eastbound cargo moving to Europe, it was booked with a forwarder in Europe, and in many [fol. 665] cases he was paid 2½ per cent, and in some cases 5 per cent, whereas the American broker invariably only got 1¼ per cent. It seemed to me that it would be only fair and reasonable if we would establish a uniform 2½ per cent, and we did that about 20 years ago, and have not varied from it since.

Q. Well, your brokerage of double what the Conference lines pay, I take it, is a considerable leverage, let us say, in cargo being sent via your line.

A. I should think it would have some influence, perhaps. I don't know why it shouldn't.

Q. Being twice what the broker gets for dealing with the Conference lines.

A. Yes.

Q. You make no bones about that, do you?

A. Not at all.

Q. If you, as a broker, got 2½ per cent from somebody, you would do your best to deal with that line, wouln't you, rather than one that paid only 1¼ per cent?

A. Well, you know, it is a strange thing that even though sometimes our rates are lower and the brokerage higher, we don't get all the business.

Q. Well, I gather you don't want all the business.

A. No, we don't look for all the business, but we get only a moderate share of the business. It apparently is not enough to influence substantially.

[fol. 666] Q. From some of the documents you have signed, you have indicated your company isn't capable of carrying all the business, anyway.

A. We don't seek to.

Q. You don't pretend to be?

A. No.

Q. In other words, you go on the theory of live and let live?

A. Well, I don't know whether I can be as generous as that or not. We live on the theory of let us live, and the other chap will probably be trying to do the same thing.

Mr. O'Connor: And you want to be let live?

The Witness: We want a chance, at least. Whether we make a go of it or not is something else.

By Mr. Hupper:

Q. Did you hear Mr. Isbrandtsen's testimony, I think in response to something suggested or brought out by Mr. O'Connor, that the present rate system of the Conferences really amounted to a subsidy of the foreign lines at the expense of the American taxpayer? Is that your proposition, too?

A. I think it is rather reasonable to assume that if the Conference rates are established on the basis of American costs, and there are a number of foreign lines with lower costs, they have quite a bonanza, if that is a good word. [fol. 667] But they have quite a nice thing of it. A very nice thing.

Q. Well, they don't have anything better in it than they would have under open competition, do they?

A. No. I think they get along better under this setup than they would with competition.

Q. Do you object to the Conferences on the ground that that rate setup amounts to a subsidy to somebody?

A. No, sir, we haven't objected to the Conference and their method of forming rates at all. As I said before, we only object to the exclusive patronage contract rate system.

[fol. 668] Q. The alternative to the present method would be that rates would be fixed by the conferences on the level of the lower ship-operating costs, ships owned by foreign lines?

A. It might be. I rather doubt it.

Q. Well, if the rates were fixed on a lower basis than the American line cost, they would receive less, would they not?

A. Yes. But my point—I guess I didn't make it clear—is that any time you get a group together to fix rates—I don't believe I ever heard of them fixing on a lower level rather than a higher level. They usually seek to maintain the rate at the highest possible level, rather naturally, I think, and that is true of most all price-fixing groups.

Q. But I was coming at it on the ground of the objection that Mr. Isbrandtsen made to that method of fixing the rates, when he said it was a subsidy?

A. To the foreign operators.

Q. To any steamship line at all, foreign or American?

A. No. No.

Mr. O'Connor: I object. He said to the foreign lines, and he should be permitted to answer.

Mr. Hupper: If you will be kind enough to wait until I get the question out, that would be helpful.

By Mr. Hupper:

Q. The alternative to the proposition that Mr. Isbrandtsen proposed, which I understood to be in substance an [fol. 669] objection to the level on which the conference lines fixed rates, which he indicated was a subsidy to foreign lines versus the American taxpayer—the alternative would be to fix rates on the basis of the lower cost, isn't that right?

A. It might not be.

Q. To avoid the subsidy objection?

A. It might be. I don't know why it has to be fixed at the absolute tip-top, or in the basement bottom. There seems to be some line between the two extremes.

Q. In other words, fixed lower so there would either be no subsidy or only a partial subsidy, as he would put it. Is that the way you would answer that?

A. Yes. I think my answer to that question—I had better

say it in my own words—would be this, that if a genuine competitive situation prevailed, or if rates were fixed on a competitive basis, then the shipper would get what he was entitled to. It may be that in that case, if there were American lines who could earn a profit, that foreign lines engaged in the same trade would probably realize much greater profit, for their operating costs would be lower. That seems to me to answer the question. I am not sure I have the question clear.

Q. I wanted to get your views on it. I am not going to explore it further at this moment.

What are your real objections to the exclusive patronage [fol. 670] contract forms involved in this docket 684?

A. My real objection is that under it, the conferences, composed of foreign and American lines, take unto themselves a power to prevent an American independent line from getting business from American shippers.

Q. Do you know what percentage, roughly, of the business out of this country moves on the American lines?

A. Well, from the figures that have been coming through from month to month, approximately half, I believe. That is my understanding of it.

Q. So that, although there are fewer American lines, between them they get half the business?

A. I believe that is largely because there is quite a volume of cargo moving, and they can only move on American lines.

Q. Well, it is one of the purposes expressed in the Merchant Marine Act that American lines have about 50 per cent?

A. Yes, a substantial part, and the Commission stated they regarded a substantial portion as being 50 per cent.

Q. There is nothing unfair about that as between the American and the foreign lines, is there?

A. I wouldn't think so.

Q. Now, coming back to the contract forms involved in Docket 684——

A. To what?

[fol. 671] Q. The contract form that is involved in this docket that I think is annexed to your complaint, what are your specific objections to that form as a form?

A. Well, I don't think that any exclusive patronage con-

tract form is proper. It is not a matter of picking the contract to pieces and saying that clause and this clause and that clause. My overall objection is to any arrangement, for instance, where foreign lines can go to American shippers to get business, but we as American lines can't get business. It is that feature I must object to. There are certain clauses from the standpoint of the shipper—and bear in mind I have been a shipper—I consider it very unfair and unlawful even.

Q. Now, have you in mind a particular clause that you consider unfair to a shipper?

A. Well, I consider the first clause is unfair to a shipper. It states the shipper must offer and ship all of his stuff by the conference lines, and the conference doesn't agree to carry a pound of it.

Q. They always have carried it?

A. No, they certainly have not carried it. In an emergency periods they have not covered it.

Q. When nobody carried it?

A. Perhaps.

[fol. 672] Q. War conditions?

A. No. I have in mind certain situations where that is not true. Where they didn't carry the goods, and it wasn't that anybody else could not carry it.

Q. You mean they declined to carry goods that was tendered to them?

A. Yes, sir.

Q. Under normal commercial conditions?

A. I didn't say that. I said under certain emergency conditions, and still other carriers could carry it, and did carry it.

Q. Wasn't every shipping contract or charter, or bill of lading, or freight contract relief the carrier under certain emergency conditions that affect him?

A. Yes.

Q. It could be that those emergency did not prevent some other carrier differently situated from carrying it, is that right?

A. That might be true, too. But I am stating in so far as the contract itself is concerned. I am not talking about what they may or may not do under certain circumstances.

I say the contract itself binds the shipper to ship everything by the conference lines, and it doesn't bind the carrier to ship a pound.

Q. What you are talking about now is what you regard as [fol. 673] the legal insufficiency of the contract form?

A. The lack of mutuality.

Q. You haven't known many instances where a conference line has refused to carry goods when they thought an emergency condition was regarded as an excuse?

A. Not at all. But you spoke of the contract form, and I am giving my objections.

Q. What is another objection that you have?

A. The other objection, for instance, is the clause that deals with reprisals.

Q. Reprisals? Does the word "reprisals" appear in that contract?

A. I don't know what the penalty of two times the amount of the freight can be except a reprisal.

Q. You characterize that as a reprisal?

A. Definitely.

Q. That says, in substance, that if the shipper violates it by not shipping goods according to his terms, and ships them through somebody else, then he shall be liable for liquidated damage to the amout of twice the freight that would be chargeable on the goods. Is that what you are referring to?

A. I am referring to that paragraph.

Q. You describe that as a reprisal?

A. Yes.

[fol. 674] Q. You don't describe that as a provision for damages in case of a breach?

A. No, sir, I don't, for this reason. I contend that personally that contract is not a good sound contract of itself. Never mind exclusive patronage or anything else. I consider the shippers, in the great majority of cases, are forced and coerced into signing. They are under duress. They are not given a choice. They are told if they want to ship with the conference lines and enjoy the current rate they must sign this contract to ship only with the conference members. I don't consider it a sound legal document for that reason. Then, when I refer to the Shipping Act, and

it states that there will be a similar offense for some group of lines to make reprisals, or even threaten reprisals against the shipper because he has used another carrier, you come along and put a paper before him and say, "Having signed this, under whatever conditions, if you ship with another carrier we are going to penalize you two times the freight."

Q. You are getting away from——

A. I am not getting away from reprisals. That is what that is.

Q. You are getting away from the topic I was pursuing. I want to come back, if I may, to this provision in the contract about liquidated damages. We will come to the other in a moment, so you will have your chance. Casting aside [fol. 675] all other considerations for the moment, we can deal with this question without prejudice to what you want to say later, what sound objection, is there in your opinion, to a shipper who makes a contract, and then breaks it, responding in damages for the breach?

A. I don't consider that the form of contract here used is proper. I don't think the shipper should be forced to bind himself to an agreement of that kind.

Q. Suppose the shipper told you to do it. As I recall it, this morning you didn't want to destroy the liberty of shippers.

A. Not at all.

Q. Suppose the shipper wants to have this kind of a contract, and he is content with it. Just suppose that, aside from all other considerations for the moment. What objection should that shipper have to being held to the contract that he has willingly made?

A. I don't believe I can answer for a shipper in that particular case. You say what objection could he have to——

Q. To living up to his contract.

A. I don't believe I can answer that question.

Q. You don't see any objection, do you?

A. Yes, I can see objections to it, for the simple reason, I say again, it has been forced on him, and it ties his hands, so he may find himself under different market conditions, [fol. 676] for instance, and he may either have a choice

there about doing something about the shipments, or not doing business.

Q. Well, that is what he has chosen. He applies for the contract, isn't it?

A. I am a little uncertain in my mind, what response ought to be made to the proposition applying for a contract. On November 1, 1948, according to the announcements made in the papers, the rates of the conference carriers that had applied right along were to become contract rates, and if a man didn't sign the contract, he would have to pay 20 percent more. I suppose you may say some shipper would apply for a contract, or maybe it would come in the mail and he would be invited to sign them, or maybe his forwarder invited him. I don't know the answer to that question other than these comments would indicate.

Q. Well, I am coming back again now to the contents of the contract. I am going to deal a little later with what you have been talking about in the last two or three answers. A shipper, we will assume, chooses to have with the carriers of the conference the contract in the form that you annexed to your complaint. In that contract there is a provision for liquidated damages in the event he breaches it. He has entered that contract with open eyes. That is what he wanted. And I want to know what concern it is [fol. 677] of anybody but the shipper what the damage provision is in the event of breach?

A. What concern?

Q. You say that is a penalty.

A. What concern that is of ours?

Q. Of anybody except the shipper who chooses to have that contract.

A. I think it might very well be the concern of others, independent carriers, for instance, because that is an additional means of forcing him to confine his business to this group.

Q. Once he has made a contract——

A. Well, the whole thing is there that too often, most of the times a great many of the shippers don't have the power of choice in this system.

Q. I wish you would confine yourself for just a moment to the assumption that the shipper chooses it, wants it. You

say he doesn't have a choice. I am dealing with the situation where he does. He makes it.

Mr. O'Connor: The witness is talking about a free choice.

Mr. Hupper: Oh, I want the witness to anwer a few of my questions. You will have plenty of opportunity.

A. I am not really certain I get exactly what you mean. Let me put it in my words and see——

Q. Go ahead.

[fol. 678] A. That a shipper who signs the conference contract, why should he object to some penalty clauses?

Q. A clause that he knows that is in the contract which binds him in the event of breach because he has chosen to have the contract?

A. Well, one thing occurred to me many, many times. I would object, as a shipper, definitely, to signing an agreement that provided a heavy penalty to me if I violated, but no penalty to the others if they violated. Again, there is an entire lack of mutuality, and it is not fair. That is just one observation I would say.

Q. I will see if I can bring you back again to the question I am asking you. Suppose there is nothing in there about liquidated damages, no provision about damages. Do you know enough law to be able to agree with me that if the shipper having this type of contract, without any provision of liquidated damages, would be liable without any expressed provision for damages by way of dead freight?

Mr. O'Connor: I object. The witness doesn't know enough law.

Mr. Hupper: He has quoted it.

Mr. O'Connor: New Jersey law.

A. I am pretty sure the law would provide damages where a good contract, a bona fide contract, a proper contract has been violated.

[fol. 679] By Mr. Hupper:

Q. So, I assume that this is a bona fide contract, just for the moment. Then damages would follow the breach of it?

A. If you could assume, but I find it impossible to assume.

Q. We have to deal with things piecemeal.

Examiner Robinson: Just play-act. It is all right.

The Witness: I can't do it on that contract. I have known it a long time.

By Mr. Hupper:

Q. Anyway, you know the general proposition that dead freight follows the breach of a freight contract?

A. I am sorry to say, as far as I understand it in New York, when it comes to berth sailings, by and large, dead freight doesn't earn any bookings to the contract period. I don't like that, but I find that the truth.

Mr. Hupper: Well, Mr. O'Connor will tell you dead freight follows breach of contract.

Mr. O'Connor: I know nothing about dead freight or live freight.

The Witness: We have had many occassions when a dead freight claim was in order, but there was no way of getting it.

By Mr. Hupper:

Q. It is very difficult to prove?

[fol. 680] A. More difficult to collect even if it is proven.

Q. And that being so, the difficulty of collecting might well be a legitimate excuse—you may not agree with this—some people might think it a legitimate excuse for providing for liquidated damages to avoid all the ups and downs of trying to prove a dead freight claim. Does that strike you as a reasonable proposition?

A. Well, I would assume, if there is some definite penalty provided for violation of a good contract, it still would have to be proven.

Q. Oh, yes, but you would only have to prove that the goods weren't shipped, or were shipped to somebody else?

A. I really don't see the difference, but there may be some. If there is some, I don't know what it is.

Q. Oh, as concerns that point, would you be content if that double freight provision was modified so as to specify dead freight?

Mr. O'Connor: Mr. Hupper, do I understand you are offering a settlement of this case, a compromise in the form of an agreement, or something?

Mr. Hupper: I don't know what you understand. You understand so many things it is pretty hard for me to answer your question.

The Witness: I guess I will have to have the question [fol. 681] repeated now.

Examiner Robinson: Read the question.

(The reporter read the question.)

A. I would say that from our company, certainly it is my view he never would be satisfied with any type of contract which would allow a group to tie up a great majority of shipments in the trade. I don't care what kind of a clause is put in. If the purpose is to tie up a great majority of shippers in a given trade to such an extent we wouldn't have a chance at the business of any American shipper, whether we were in a business or not, doesn't mean anything; I just mean we should have a chance at it. Then we would never be content.

I tried to explain something this morning, and I don't remember whether I was interrupted or not, but comparing it to domestic transportation. I don't know whether it would be considered proper or not, but Congress has given the railroads the power to form conferences and fix rates by agreement. All right. Now, it has not given——

Mr. Hupper: We are not talking about railroads. We are talking about ocean commerce, and I don't think anything you can bring forward with respect to rails will have the least relevancy.

This is my witness; sir.

The Examiner: I will tell you, I don't know what you are going to say, so go ahead and say it.

[fol. 682] The Witness: It is this: The people of the country in part, a certainly Congress, gave the railroads the right to combine in price fixing conferences. There we are. They were not given any power, and they could not be given power, it is unthinkable they would be given power to utilize an exclusive patronage contract rate system. They couldn't. So as a domestic shipper, if I wanted to use motor trucks, then I have to pay the railroads a higher rate, and that is the equivalent to what we have in the

ocean system. It does have a bearing and illustrates what I want to say. The question was asked me if there were modifications of certain clauses, would we withdraw objections to the contract system. I say, yes, we would have objections, just as motor carriers would probably object if the railroads were given any power to say to shippers—never mind penalties, never mind anything else—if they say to shippers, "If you ship all rail you get one rate, but if you insist on some of the business going by motor truck, you have to pay a higher rate."

Everybody in the shipping industry domestically would object to it, and we object to it as long as it is in the ocean trade. That is my position.

By Mr. Hupper:

Q. Does your objection go so far as to secure the prohibition of any contract in any form?

A. No, sir.

[fol. 683] Q. Between a carrier, or a group of carriers, and shippers, with respect to the handling of all their business? I am talking now about water carriers.

A. So far as our understanding goes, a group of lines might make a proper contract with a shipper that actually carries certain goods. Whether I liked it or not, I don't know whether anything could be done about that.

But if a contract is made, not for the carriage of the goods, but for the purpose of excluding an independent competitor, or preventing an independent competitor from having access—there is just no contract of carriage involved there—but otherwise, for a group to be able to prevent a carrier, a common carrier, if you were not a contract carrier, from going to a shipper and at least having a chance to get some of his business, I think it is objectionable.

Q. You would go so far as to say that even if there were only a slight difference between the carrier rate and the contract rate—perhaps you would go so far as to say if there was no difference at all, you would be against the so-called exclusive patronage contract?

A. What I really think about that is this: I said this morning I personally don't know altogether whether the Conferences are as desirable as generally thought to be.

They have been allowed by law. And to my mind, in the public interest, and we are part of the public, too, of course, [fol. 684] even if we are competing, it is a very important thing that you allow a group exemption from certain things which otherwise would be a straight violation of law, such as fixing prices, pooling earnings, and so forth—that you shouldn't allow them any practice that would enable them to obtain a monopoly on American trade rights.

That is my honest, personal opinion and conviction that has been built up over many, many years.

Q. You have made a great study?

A. I really have. I think if you are going to give a group certain exemptions, for goodness sakes don't let them monopolize the thing, for that goes contrary to every concept of American enterprise that we know anything about.

Q. You say that from the point of view of one independent line which nevertheless has the right to join a Conference and participate in these contracts—first, stay outside to be independent. You are saying it is in the public interest in this country that your line shall be permitted to do that, and at the same time, try to upset the arrangements made by the lines which have seen fit to come into the Conference?

A. I don't believe that is a right statement, or a fair statement, to allow me to say it, Mr. Hupper, for this reason:

You speak about us being allowed to stay out of the [fol. 685] group. I don't know what kind of a thing we are getting to in that particular case. I have a personal belief I am entitled, as an American, to start a business, even if I know I am going busted. If I want to make a fool out of myself, I feel I am entitled to do it.

But as far as our being permitted to stay out of the Conference group, I can't see that at all.

Q. If you should be forced into it, and if you don't want to—I am only dealing with this as a right, and your preference to be independent.

A. I know, but being permitted to stay out of the group, to my mind that is ridiculous.

Q. You are playing a bit on words now, and dodging——

A. No, I am coming smack on to the other thing, and that

is this: Why don't we join these groups? When we join, or if we join this group, at that instant two things would happen concerning freight rates. From that point on, we, as a carrier, would never have anything to do with what freight rates were applied on shipments moving on our ships. We might have a voice in the Rate Committee Bureau—we would be one of 14 lines, with the rates being fixed on majority vote.

Q. You know it is done by unanimous vote, don't you?

A. I don't know that.

Q. I think you will find out that is right.

[fol. 686] A. That makes it much worse, in my opinion, for then the American shipping interests may be seriously endangered by some one line that has no interest in this business whatever. Some of the lines don't call at all of the ports, and yet one line calls at this port, and by his single vote could upset another port.

But let me finish what I was saying, and that is this: When we join a Conference, if we did that, at that minute, even with the unanimous vote there, we would lose control of what we might charge. We might upset something the others were doing, but we have nothing to do with what we charge. And at that minute the shippers would not see any occasion when there was any competitive force brought to play on the rail level.

Q. Well, you are aware that this entire Conference situation and rate situation is policed actively by the United States Maritime Commission, aren't you?

A. I wish I could say I agree with you, but I don't believe it, sir. I don't believe it is policed. Sufficiently, let me add that—sufficiently.

Mr. O'Connor: May I ask you here, would you point out the Conference agreement where this provision for unanimous vote of the Conference is on fixing of rates? We have understood that——

Mr. Hupper: Well——

[fol. 687] Mr. O'Connor: You mentioned it several times. We have always understood it was a majority vote, and as far as we can find from the reading of it, that is what we understand.

Mr. Galland: Here it is (indicating).

Mr. O'Connor: I am talking about the North Atlantic.

Mr. Galland: For the westbound agreement, Article 4. The eastbound agreement, No. 4490—it is Article 6.

Mr. O'Connor: "The presence of a majority of the membership at any meeting shall constitute a quorum and the unanimous action of those present shall be binding."

All you have to do is to have a majority of members present. In this instance, there could be seven present, all foreign lines, and they could fix the rates. What is the use of quibbling?

Mr. Hupper: You are assuming they don't all attend.

Mr. O'Connor: I am talking about the worst that can happen.

Mr. Hupper: They all attend, and they are posted and the vote is unanimous.

Mr. O'Connor: There are six foreign, so you have to get them from abroad.

Mr. Hupper: They are right here attending the meetings. You don't have to worry about that.

[fol. 688] By Mr. Hupper:

Q. Mr. Crinkley, in the course of your study of the shipping situation, I take it that you have read the hearings before the Alexander Committee, and its conclusions.

A. I have not read the complete report of the Committee. I read the conclusions and some of the report. It is contained in five volumes, the fifth being more or less a resume. I read that.

Q. You haven't read all the testimony?

A. No, not all of it. I read one or two volumes.

[fol. 689] Q. You read the final report completely, didn't you?

A. I read the final report, I think, completely.

Q. Are you aware that that investigation which went on, as I recall, pretty close to three years, did it not?

A. Yes, I believe it did.

Q. It formed the basis of the 1916 Shipping Act?

A. Yes.

Q. And I take it you noticed from time to time references to that report by various shipping interests, likewise, by the Maritime Commission and its representatives?

A. Yes.

Q. Are you in sympathy with the general point of view of that Alexander Committee report?

A. I would say in a general way—I might explain what I mean by that.

Q. Certainly.

A. I understood the Alexander Committee would more or less say that the conferences were openly violating the law, but that there were some advantages that they offered the American shipping public in the matter of certain stability of rates and sailings, but that it might be well to allow them openly, under the law, to operate conferences, provided that certain safeguards were observed, and that they were regulated in the public interest by an administrative body, which was the United States Shipping Board. [fol. 690] The Shipping Board was formed to regulate shipping, and that from reading the law, it is my impression that they had in mind rather suspicious regulations for——

Q. Suspicious?

A. Suspicious regulations. That they require every agreement to be filed and approved before it could be acted on. That is what I mean by suspicious regulation.

Q. Doesn't that go a little far beyond certain provisions in the law?

A. I don't think so.

Examiner Robinson: Let me get you straight. You mean that every agreement filed with the Commission comes in with a cloud and a taint on it?

The Witness: Let me say it this way. These people are doing something. The minute they sit down to talk about rates, that in any other industry in the United States would put them behind the bars. So therefore, every agreement comes in with something of smoke.

Examiner Robinson: I just wanted to get your idea.

By Mr. Hupper:

Q. You are a little off when you say that every industry in the United States would be behind the bars.

A. Well, they don't follow that. They get fines fined against them.

[fol. 691] Q. How about the CAB?

A. The Civil Aeronautics Board?

Q. Yes.

A. Well, I mean—that is a regulatory body, isn't it?

Q. You are talking about every other industry in the United States. Aren't various industries exempt?

A. Very, very few. If you took the total number of industries in the United States, and take those exempted, I imagine it would be a tiny fraction of a per cent.

Q. How about motor carriers? How about various bodies under the supervision of Interstate Commerce Commission?

A. Of course, when you come to a thing like that, in my town one of the electric light companies has a complete monopoly, but prices, and so forth, are set by the Government.

Mr. O'Connor: Mr. Examiner, are we going to take care of all the ills of the universe here before we get through?

Examiner Robinson: I should like to hope so, but I am afraid we won't.

A. (Continuing.) I didn't quite finish. Every agreement concerning rates or fares, and so forth—they are all listed in the Shipping Act, and they must be filed, and must be approved before they can be acted upon. My own personal assumption is that in the rate fixing by conference groups, [fol. 692] they cannot immediately put into effect until the agreement with respect thereto is filed and approved. However, that is beside the point. It has never been required by the Commission.

[fol. 693] By Mr. Hupper:

Q. Do you say there that the Conference group agree on a certain rate for the movement of steel before that rate can be put into effect, and that it must be approved by the Maritime Commission?

A. I am not a lawyer, but I say that is what the law says.

Q. You think that is so?

A. Yes.

Q. You don't give any weight to the various regulatory acts which permit complaints by the shipping interests against discriminatory and unjust actions?

A. Yes.

Q. But you think in addition to the relief afforded by those provisions subsequent to Section 15, there should also be a prior approval under Section 15?

A. It is just my position that the law requires every agreement to be filed and approved.

Q. In other words, you wouldn't, from your point of view, think that these carriers in Conferences could do a single thing that implied agreement without first getting permission to put it into effect?

A. Yes.

Q. No matter how minor it was?

A. That is right.

[fol. 694] Q. The carriers certainly then would be in a first class straightjacket.

A. They certainly would, for having given up a great amount of liberty for the privilege of getting together to fix prices and rates.

Q. Is that the major reason why your line keeps out of the Conference, so it would be free from the guidance of the Commission?

A. No. I have said we prefer to be independent in the American way, whatever that means. That is what I mean personally when I say I want to be independent.

Examiner Robinson: We will have a short recess.

(A short recess was taken.)

Examiner Robinson: Let's proceed, gentlemen.

By Mr. Hupper:

Q. Mr. Crinkley, is frequency of the service of the carrier or a group of carriers an important consideration in this trade covered by Docket No. 684?

A. An important consideration, you mean, to the shippers?

Q. Yes.

A. Yes, I think so.

Q. It is important also from the point of view of the carrier, is it not?

A. I don't believe I can follow that exactly.

Q. I will put it this way: The more frequently a carrier

[fol. 695] or a group of carriers sail a ship, the more business, comparatively, they are likely to get?

A. I think that is generally true.

Q. It should be, shouldn't it?

A. Yes, it is common sense, I believe.

Q. Is the frequency of service rendered by a carrier or a group of carriers, or should it be, a consideration to the shippers as to where they will place their transportation business?

A. I think the shippers generally feel, whether ocean shipments or otherwise, that they should be free to use the vessels that best suit their convenience.

Q. And the more frequent sailings the carrier or the group of carriers provide, the better it is, probably, in the interest of the shippers?

A. I know positively that it is in the interest of the shippers that they should have ample service available, and number of sailings so they won't necessarily have to wait to ship their goods.

Q. Would you apply that doctrine to a situation where a group of carriers were sailing, say, three to four hundred ships a year, as against somebody sailing, say, 25?

A. I don't think the shipper should be forced to make a choice. I think he should be free to use all 521 sailings.

Q. You would add the two instead of shutting off the larger group against the smaller?

[fol. 696] A. Yes.

Q. But wouldn't you say that the shipper who has a very considerable business in respect of which he needs sailing space would naturally be attracted to the group that had the larger number of sailings?

A. I think you there get down to one very important factor in this whole proposition, and it is my contention, if you will let me put it that way, that for a group which provides this multiplicity of sailings, to say to a substantial shipper that he has considerable service, that we will give you one rate that you confine your ships to our group, whereas if you don't, and you still want any one of the shippers you have to pay a higher rate—that is the element of coercion in the situation.

Q. Even though that shipper might be entirely content with the volume of service given by the group?

A. I am sure that practically speaking any shipper would be satisfied with the amount of service offered by the group. We are talking about common carriers here, not tramp ships —common carriers which would provide their space generally to the public on equal terms. That is the essence of the common carrier.

Q. Well, you have a group here that apparently has all the space that the public requires. You wouldn't suggest that that group is in any way failing to perform its common [fol. 697] carrier obligations, would you?

A. Well, we haven't got to a place in foreign trade there where to begin operations one must get a certificate of public convenience. The trade is open to all. Because a certain group is existing in that trade sufficient to carry the business doesn't mean, as far as I can see it under what I might call the American system, that anyone has any right to think that others shouldn't come into it. There may be, in a given neighborhood enough grocery stores to adequately serve, but if I want to open another, all right. The same thing with the professions—the medical profession, the profession of law, or what-have-you.

I have heard it said there are too many lawyers, yet every year there are a number of new ones coming into the field. I say there is always room for a good lawyer. I think a man in the legal profession will always have a chance. There should also always be a chance for a good steamship operator. It shouldn't be closed to him.

Q. You said something a moment ago about tramp service, as I recall it, or what Mr. Isbrandtsen was in substance referring to yesterday. I take that there is a substantial difference between making rates for what you might call substantially a tramp operation and the making of rates for what might be called a common carrier package freight operation.

A. I think there is a tremendous difference. A tremendous difference.

[fol. 698] Q. And in your company you have both classifications of business, do you not?

A. Yes, sir.

Q. You have a considerable amount of what you might call roughly the tramp business, full cargoes?

A. A very considerable business in that field.

Q. And the making of rates in that field is a much simpler matter than the making of rates in the common carrier packing field, is it not?

A. Yes, sir, very much so.

Q. As I understood Mr. Isbrandtsen yesterday, he said he knew what it took to produce a profit, and so forth. You would agree with me, wouldn't you, that that is more nearly true, at least an easier statement to make than to say that you can figure out in the common carrier business with respect to package freight what it is going to cost to transport it and what your profit is going to be?

A. It is much easier on full cargo or tramp business to calculate rates than it is in the berth or common carrier field. Much easier.

Q. In the berth or common carrier field, the making of your rate is influenced greatly—and this is not a new question, I think you have covered it substantially—by whether you can get particular lots of packaged cargo in competition with other people who are also in that field [fol. 699] That is right, isn't it?

A. I should say in establishing a freight rate on a common carrier there are a number of important aspects to be considered. Competition is certainly one of them.

Q. Yes.

A. But there are others, such as the comparison between weight and measurement, the volume in which the particular item of cargo means as to the value of the package.

Q. Talking about weight and measurement, they apply the rate that brings in the greater revenue, is that right?

A. Yes and no. A great many shippers are confused by the weight and measurement rate, and the carrier will translate the thing back and forth.

Q. In other words, you accommodate the shipper's desires?

A. I think it can be said this way. The common carrier tries actually to have his ships full and down, to give a balance between weight and cargo, and that is an asset in the rate question also.

Q. But take two carriers, one carrier in the group in competition. They are all guided by that consideration of full and down?

A. They should be.

Q. Or they should be?

A. Yes.

Q. They don't stay in business long if they are not. The [fol. 700] procedure on that feature, full and down, would be the same in your company as presumably it would be in any one of the conference carriers set up, is that right?

A. Yes. I don't think there is any difference in the requirements of my company than any other carrier or group of carriers. The consideration is the same. I don't know that the other carriers always exercised and utilized the same considerations in establishing rates.

Q. Yes, but after all, this full and down is sort of a mechanical consideration, mechanical or practical?

A. I agree with you. It is not only that, but it also takes into consideration certain market conditions. Before the war there was no ship that left for Europe that was down. Manufacturers over there were manufacturing heavy goods and exporting in competition, and it is only since the war that we are shipping steel and other cargo.

Q. You have that competition constantly as between goods produced in various countries?

A. Yes.

Q. That is one of the factors that increases the competition in international trade?

A. That is true. It is one of the factors we must take into account in considering freight rates.

Q. And after you have gone through this full and down proposition, it is generally the purpose of your line to give [fol. 701] the shipper, let us say, a more comfortable rate than any other line will give him?

A. No, I couldn't hardly say that. I would like to, perhaps, but I can't. I testified, for instance, that we at this time are competing with other independents in our line, and I preferred to let them carry cargo frequently rather than reduce our rates to what I understood they wanted to quote.

Q. And you are quite content to have those competitors carry cargo at a loss?

A. Well, I——

Q. If they chose to do it?

A. If they chose to do it, by all means, let them carry it at a loss.

Q. Of course, that has an effect on you. It keeps you from getting cargo to make a profit?

A. It certainly does.

Q. You haven't directed proceedings against them on that ground?

A. Not at all. We figure we have to meet competition as we find it or we have no right to stay in business.

Q. The people who carry it at a loss, they hurt your company quite as much as others who carry it at a profit, don't they?

A. I don't understand necessarily that in these instances I have spoken of that Meyer carry it a loss, if you are talking about that particular line. If they did, I think I would [fol. 702] have access to action by the Commission. They have the authority and the duty, I consider, under the law, where there are unfair practices, to go in there and correct it.

Q. But anyway, they quoted rates you didn't want to meet because you were fearful if you did you would be carrying at a loss. That is about correct, isn't it?

A. Either that, or there may be other considerations. It may be at times, and I wouldn't care to get into a position of uselessly depressing rates. My company has tried to be conservative. I don't know whether our conference competitors think we have or not.

Q. We have——

A. Taking independent lines as a whole, we have tried to carry on a well-run, conservative steamship business.

Q. Let me put a simple situation to you. Suppose that Mr. X is a shipper and came to your company and said he would like to ship over your line conservatively considerable amounts of cargo. You have two sailings a month. Let's say he intimated to you that if you did well with him on the first sailing he might give you a second shipment if you did a little better by him. Would you give him a better figure with respect to the second sailing?

A. No, sir. We keep pretty much away from that kind of thing. I believe most shippers in the trade, and I believe most of the other lines will agree when I say this, [fol. 703] that generally speaking my company has preserved a stable rate over extended periods of time. We

don't propose to shoot rates up sailing by sailing. We like to have stability as far as possible. We have worked for that. We have been reasonably successful in it.

Q. Well, while you might give him a low rate on the first sailing, you wouldn't make the rate lower than the first sailing, if he gave you the second, or the third, or the fourth?

A. That is really one of the suppositions I have a little difficulty in dealing with. I will say this. It is not my policy, and I have the control of rates, for a man to come in and say I will give you this shipment and if you will give me a break in the rate I will give you another, and if it is even less, I might even give you the third, or the fourth or the fifth. We have literally hundreds of times turned away such freakish deals as that.

Q. You have had those suggestions made to you?

A. We have had every kind of suggestion on earth to us. But where the thing runs along that line we are perfectly content, we have done it hundreds of times, let the cargo go rather than get into a screwball deal like that.

Q. I understood, perhaps by Mr. Isbrandtsen's testimony, and I think it was supplemented by your own today, that on occasion you make a particular rate for a particular [fol. 704] shipper which, it was described, enabled the shipper to sell goods in a certain foreign country in competition with shipments intended from another foreign country to that same destination—make a special rate for that, but at the same time, an undertaking on the part of the shipper that he give you all his shipments over a certain period—tie him up by contract. Am I correct in that understanding?

A. Well, I would say this, that since the war—I want to make this very clear—we have not utilized any of those particular arrangements that we spoke about this morning. Not at all, anywhere.

Q. All before the war?

A. At the time that Mr. Isbrandtsen spoke of, and which I testified about this morning, there was a specific reason, which is already in the record, when we established a special rate which the shipper says, and thoroughly well establishes the need in order to enter or obtain a market.

Then we expect that shipper, since we have protected him at the rate he can do the business, to protect us with his business. And at that time, in 1930, and up to those circumstances, we have a confirmation to that effect. And what wasn't made clear yesterday was that there appear on our tariffs to some extent, and certain in the principal tariffs, I don't know whether I should say dozens and dozens of items, or what, that never moved. They got in there at one [fol. 705] time or another. On plumbing supplies to the Far East in 1933, '4, '5—say '35, I would say, without looking it up, and without refreshing my memory from anything, that the going rate in the tariff of the conference produced no business. Now, we established this special rate, and this man assures us of his business. Sooner or later some other company is going to want to ship also, and there is a lot of digging around about that fact. We establish this rate, and then anybody—anybody that comes along shipping that commodity gets that rate. There is no question about it—there cannot be. We have been in business about 21 or 22 years. I have been with the company 19 years. And as an independent carrier, there has been no time that anybody to my knowledge has ever brought any complaint, directly or indirectly, that we have been charging different rates to different shippers on the same commodity and in the same trade. The Maritime Commission has never had any complaint to that extent. I have never had any complaint made to me. I think it ought to be clarified.

[fol. 706] Q. Dealing with the case Mr. Isbrandtsen mentioned yesterday and adverted to this morning, plumbing supplies to certain Far East destinations, in consideration of the rate that was given that one shipment, a contract was made between him and your company with respect to subsequent shipments which tied him up so that he could not ship with other companies during the duration of that contract. That is correct, isn't it?

A. No, sir, that is not correct. There is no such thing as a formal contract in the sense of the contracts that we discussed.

Q. It was the confirmation of an understanding?

A. It was a confirmation of an understanding that if we

established the rate to allow this business to be done, we would get the business. That was the sum and substance of it.

I want to go further than that, to make it very clear that after that, I don't know how long after that, whether it was some three months or a year—I should say about a year—there gradually began on the part of some other American shippers of plumbing supplies to the Far East—we secured inquiries and they approached us, and they were given the same rate, and we secured the business.

Q. I understand that.

A. It even got to the place where the Standard Sanitary [fol. 707] Manufacturing Company had to quit making bathtubs in Germany and they shipped by us. They all got the same rate.

Q. I was coming to the case where you did give a special rate to some shipper who apparently was the only one in the business at that time.

A. At that time.

Q. And in consideration of that courtesy on your part, he tied up his busines with a confirmation, or an understanding, whatever you call it?

A. It wasn't any courtesy, I should say. It was to our interest to help him develop that business, as much as to his.

Q. I quite agree. I am not——

A. I don't believe the courtesy was a very practical consideration. It meant business for both of us, whereas there was no business before.

Q. And it gave you more business later on because he wasn't left free to deal with X, Y, and Z? He dealt with you on certain things?

A. I think that is a rather awkward way to do it, but if you want to have it that way, I suppose it is all right.

Q. I think it is good. I am not trying to embarrass you.

A. Well, I can't agree with you when you put it that way. We gave the man a rate on which he could do business. Now, you say after that we tied him up so he couldn't do [fol. 708] business with other shippers. Where does that come in?

Q. I only described the facts of what you did. You had

a binding contract, as well as other people do. What you object to is the other people having too many of them.

A. I can't say that is true, because I am not using contracts, and haven't since the war. That goes back into history. That is ten years ago.

Q. All right, it might have been 15 or 20.

Mr. Crinkley, I don't suppose you were able to bring over that confirmation of understanding?

A. No. That is being searched for. It may take some time to get it.

Q. I just mentioned it so that when it is convenient——

A. Let me see. I didn't go back to the office at lunch. I don't see any of our people here.

Q. As long as you don't overlook it, that is all.

Mr. Hupper: I have finished for the time being.

Cross-examination.

By Mr. O'Connor:

Q. Mr. Crinkley, you have just been talking about some of the rates which are on file and put there by Conferences, and you said there were no goods moved on those rates.

Would you say they were imaginary rates, or was any real calculation——

A. No, I didn't have that in mind at all. I mean that—[fol. 709] let us say just for the sake of illustration, that 10 years ago some fellow wanted to ship a given item. He might have had several shipments of it, and had a rate established, and then the business petered out. Maybe manufacturers of other countries made the same product, and it was no longer shipped from this country. The goods were no longer moved, the rate was not removed from the tariff, and there have been a lot of such items that have accumulated in the tariffs.

Q. As time goes on it might not be applicable to a certain circumstance, is that correct?

A. Yes. There are a lot of rates that are just there.

Q. In the Eastbound North Atlantic trade, this proposal that was put forth about October 1st, or earlier, 1948, to put substantially all the contract items in that trade, all the items in that trade under contract, it is a fact that those

items that were to be put under contract numbered about 2,000?

A. About 2,000. Let me say about the 2,000 that there might be a certain category—for instance, agricultural machinery and equipment.

Q. I am coming to that.

A. That is one item. There might be a number of items shipped under that. But about 2,000.

Q. Now, you recall yesterday I introduced certain sheets that were corrections added to the traffc schedule of that [fol. 710] Conference on file with the Maritime Commission, and that was marked Exhibit 3.

A. Yes, I recall.

Q. It is a fact, is it not, that there were certain exceptions, certain items that were not put under contract?

A. Yes. Four or five items, I believe.

Q. Well, I show you Exhibit 3 and ask you, is it a fact that out of all the thousands of items in that trade for which rates had been established, whether or not the figure is nine items that were not put under contract?

A. Yes. Those are the items appearing in the tariff. There are nine items not to be subject to the contract. The balance were to be.

[fol. 711] Q. Among those nine items about which I want to ask you whether or not there was sufficient trade in such items that they might or might not be put under contract—among those nine exemptions I find corpses and the ashes of human beings. Can you tell us whether there is much cargo in that trade, or competition for that type of trade?

A. I don't recall ever having carried any ashes of a human being on any of our ships, or any corpses. I don't believe there is very many moved.

Q. Considerable was said this morning to you by Mr. Hupper, and in exchange here, about the freedom of your company to join the conferences. Is it the converse of that also true, that you are free to stay out of the conferences if you so choose?

A. Yes, sir. And I hope it will stay that way forever. This is America.

Q. You said that you considered the contract, non-contract, exclusive patronage rate system as unlawful. In your

observation of this application to shippers, would you say it was anything more than unlawful or entitled to any other designation?

A. Let me see. I said it was unlawful, and—did I say more about it?

Mr. Hupper: How much more could he say?

The Witness: Really, I believe in the Supreme Court [fol. 712] decision in the Swain and Hoyt case, they said it was illegal and unlawful.

By Mr. O'Connor:

Q. What is the effect in your experience on the shipper, or the rights of the shipper?

A. Well, I have considered that he is prevented on a practical basis from exercising his free choice on the care that he should use from day to day.

Q. In your opinion?

A. It ties him up. It confines him. It takes away his freedom to deal with whom he chooses among the common carriers who provide service.

Q. And from your standpoint as an independent competing carrier, what would you say was the effect on you?

A. Well, the effect on us, I think, I have tried to explain, is simply that we are American citizens, owning and operating American ships——

Mr. O'Connor: Mr. Examiner, I have had a constant chatter behind me all day, so audible that it is annoying. Now, it may be so intended, but I wish we could proceed. I can't hear on both sides of my head.

Examiner Robinson: I hadn't noticed it, but if you say so, I instruct the people in the audience not to do it.

Mr. O'Connor: It is just two gentlemen back of me here. [fol. 713] Examiner Robinson: I am sure they won't continue.

By Mr. O'Connor:

Q. Will you continue?

A. The effect on us is that we as mere citizens ow-ing and operating American ships find American firms in American foreign trade that we don't have access to. Now, I realize

we may go to a given shipper, and he may not like us, and he doesn't want to ship with us. A lot of them don't want to ship with us, contract or no contract. But it prevents us from having access to the business as American shippers, and we especially object to the fact that here a group that is composed mostly of foreign lines are saying to us, you can't ship with that American shipper because you won't join our group and be controlled by us.

Q. Would you say that this system, the exclusive patronage contract system, was a benefit to the commerce of the United States?

A. I certainly do not.

Q. Would you say it in any way contributed towards the development of the American Merchant Marine?

A. Well, it has been in use since 1926, and of itself, I haven't seen anything done towards American Merchant Marine progress.

Q. Mr. Hupper said something about the public interest [fol. 714] of this country being concerned with the operations of this conference. Is it not a fact that two-thirds of Mr. Hupper's clients of today are foreigners, non-citizens, non-American corporations?

A. I don't recall the exact proportion, but certainly a substantial part of them.

Q. Well, of the 12 lines in these conferences, there are four American lines and eight foreign?

A. Two-thirds foreign, yes.

Q. You were examined as to what you had ever done toward raising this issue before the Maritime Commission. Now, isn't it a fact that over the years that you have written letters of protest to the Maritime Commission about the use of this contract system?

A. I have written the Maritime Commission as a commission, and to the chairman, and I ever wrote the President of the United States and protested this proposition that foreign lines could prevent American shippers—could prevent us from doing business on our American ships.

[fol. 715] Q. Didn't you call the attention of the Maritime Commission on several occasions to the fact that as to the American flag ships which you had currently purchased from the Maritime Commission itself, that these Confer-

ences dominated by the foreign lines were preventing you from using those American flag ships in the trades of the United States?

A. We did protest repeatedly that feature.

Q. Did you ever discuss the matter with the members of the United States Maritime Commission?

A. Yes, on several occasions.

Q. And with other officials of the Commission, such as Mr. Hallam and Mr. Tibbet, in charge of Regulations?

A. I talked with them over the years about this particular Conference contract thing.

Q. Was anything ever done about it?

A. No.

Q. Now, much was said this morning about this word "cartel." Mr. Hupper examined you along the line that you had fabricated the word "cartel," or at least in its application to this so-called Conference system.

Isn't it a fact that in his statement to the public on the institution of the Anti-Trust action against the Far East Conference, that Attorney General Mr. Tom Clark referred to this system as a cartel?

A. He did in the public press releases designate the Far [fol. 716] East Conference as a cartel.

Q. Are you familiar with the fact that the origin of "cartel" is a military term indicating enemies getting together to control themselves?

A. I read that in the dictionary.

Q. You have had some experience with members of these cartels doing a little under-the-table business as against each other, haven't you?

A. You said we have had experience with them. We have heard very directly about such instances taking place on quite a number of occasions.

Q. Reference was made to the trade on this North Atlantic route following the surrender of control on March 2, 1946 by this international organization, UNRA, and following that for some time Government cargo was the principal cargo or article of transport, is that correct?

A. Yes. Principally the shipments being made by various departments and branches of the United States Government, but also considerable cargo purchased by various

government purchasing missions, but almost all, if not all, financed by the people of the United States.

Q. And those were organizations like UNRA sending goods?

A. Yes.

Q. And the Army?

A. That is right.

[fol. 717] Q. And the Department of Agriculture?

A. Yes.

Q. And the Reconstruction Finance Corporation?

A. Yes. Quite a number of different Government divisions.

Q. Your company transported a lot of that cargo, did it not?

A. Oh, yes.

Q. And considerable agricultural goods were included?

A. Oh, yes.

Q. Now, as far as you know, did the Government, or any one of these Government Agencies, or UNRA, ever sign a contract with any one of these Conferences?

A. None of them signed a contract. They couldn't. The law doesn't provide them to make any arrangement to prevent their buying competitively. If they signed a Conference contract, they couldn't buy competitively. At least, none in my experience has.

Q. You discussed that question——

A. I discussed that question with many of them.

Q. Not that you asked them to sign, but in reference to their signing up with Conferences?

A. No. I know certain Conferences made an effort to have them sign, and they refused.

Q. You do know this specific North Atlantic Continental Freight Conference endeavored to have the Agricultural [fol. 718] Department sign a contract, or agree without the actual signature on the transportation of agricultural goods, do you not?

A. I am informed that they attempted to have the Department of Agriculture sign contracts when UNRA was discontinued and the Department of Agriculture took over.

Q. Were you not also informed that when the Department of Agriculture refused to sign the written contract,

that they endeavored to obtain an oral, so-called gentlemen's agreement?

A. That information came to my attention.

Q. And you pursued it through the Agricultural Department?

A. Yes, sir. We galloped down there in high speed and said, "You cannot do this. You shouldn't do it. There are many reasons why you shouldn't do it." And they didn't do it.

Q. Something was said about reducing the number of sailings in accordance with the demand for cargo space. As I understand it, you have been operating this berth or line service in this North Atlantic trade from North Atlantic ports to Antwerp, Rotterdam, and so forth, since 1931?

A. Yes, sir. We began with one sailing monthly in 1931, and late in 1933 we increased that to a minimum of two sailings monthly, and we have maintained that schedule as a minimum from that time until this, with the exception of the war period.

[fol. 719] Q. Is it the fact that during that time you sailed ships that were not full and down?

A. Oh, yes. We have had many sailings which were not full, particularly in the pre-war depression years.

Q. And you kept this regular standing schedule?

A. We maintained this regular schedule as did any line in the service.

Q. As any one of the Conference lines in the service?

A. That is right. The last ship to discharge a commercial cargo in Rotterdam before the Germans bombed it off the map was our ship. We operated just as long as American ships could operate during the war period.

Q. You said your Conference rates were based upon consideration of many factors that entered into the calculation?

A. You say the Conference rate?

Q. I mean your tariff rates were based upon consideration of many factors which entered into the calculation?

A. Yes.

[fol. 720] Q. Now, you get reports, or had in the past gotten reports from some of the conference lines as to their method of adopting tariff rates, have you not? In fact,

they have come to you as much as you used to work for those lines?

A. Yes. I am not exactly sure that I understand your question, but I believe I understand it. I am familiar with the manner in which conference rates are established.

Q. Some of them?

A. Yes.

Q. Well, would you say they take into consideration all the factors that you do?

A. I don't believe so, as a rule, from the information I have, but naturally I don't know—I haven't sat in on their rate meetings. I don't have complete information about it.

Q. Much has been said about the shippers' attitude toward these contracts, and you have been asked repeatedly whether you thought you had a right, or whatnot, to interfere with the shipper signing the contracts. Now, will you state what in your opinion, from your experience and your contact direct with the shippers,—will you state in your opinion what you believe is the attitude of shippers, and in what proportion, toward these contracts?

A. My personal feeling, and I feel it very strongly, and it is based on a long experience and a very wide acquaintance with shippers, is that 90 percent or more of the ship-
[fol. 721] pers don't like the conference contract system, and if they didn't feel they were forced to sign it, they would never sign it. I don't know the exact figures, of course, but it is my impression that 90 percent or more do not care for the conference contract system. They think it is an imposition.

Q. You were asked as to whether you would be content to —satisfied if certain clauses of the existing contract were removed or modified. Did I correctly gather your position that you were opposed to any form of contract binding shippers?

A. Well, I think that is a rather narrow conclusion. I would rather say it this way. We are opposed an any system by which a group can force shippers into any arrangement or agreement by which an independent competitor would not have access to business of American exporters and importers. If I understand it correctly, and this may be especially some thought where there is not an answer—I

don't really mean that—in making the deferred rebate system a criminal offense under the law, I understood the thought was not particularly as a rebate, but its purpose was to monopolize a given trade.

Q. Well, do you think that you should continue to oppose the use of the deferred rebate system even though some shippers might want to sign up for it?

A. I consider it is a criminal offense under the law, and it shouldn't be allowed.

[fol. 722] Mr. Hupper: That is not involved in this case, Mr. O'Connor.

Mr. O'Connor: In the Swain and Hoyt case the Supreme Court of the United States said this scheme is just a replica of the illegitimate son, the deferred rebate system.

Mr. Hupper: That is a little removed.

Mr. O'Connor: They look like the parents sometimes.

Mr. Hupper: Well, I think the Alexander Committee had something to say on that subject.

By Mr. O'Connor:

Q. You are familiar, speaking again about the shippers' attitude—you are familiar with the proceedings in Docket 684 which involved the contract, non-contract practices of the Pacific Coast European conference?

A. I followed that with a great deal of interest.

Q. Isn't it a fact in that proceeding every shipper testified he was opposed to the contract system?

A. They all testified they were opposed to it and would not sign it except they considered they were forced to do so.

Mr. Hupper: That answer comes from your examination of the record in the case?

The Witness: Yes, sir. I believe I read all the proceedings in that, on both sides.

[fol. 723] By Mr. O'Connor:

Q. In reference to your communication with the Maritime Commission concerning these practices of the Conference, you referred to your calling attention to the fact that early in 1948 the Mediterranean Conference had offered for approval a Conference Agreement with these

same words, "contract, non-contract rates," which appear in these two Conference Agreements under attack in this proceeding. Is that correct?

A. Yes.

Q. And you have called the attention of the Maritime Commission to other instances of practices by Conferences, have you not?

A. Do you mean in connection with this Conference contract rate system?

Q. Yes.

A. Yes, I have called the attention of the Commission to other proposals which I considered——

Q. Or other violations of the Shipping Act? You have called the attention of the Maritime Commission to the use by Conferences of the deferred rebate system, haven't you?

A. Yes.

Q. And you have called the attention of the Maritime Commission to the fact that the company which is owned and controlled by them, the American President Line, is a party to using the deferred rebate system, haven't you?

[fol. 724] Mr. Hupper: Now, do we have to go into the American President Line? I object to anything not related to my direct examination.

Mr. O'Connor: You brought out the Far East operations and everything else.

Mr. Hupper: I haven't been talking about the Far East.

Examiner Robinson: I don't mind what you say about the Maritime Commission, because everybody has referred to the American way. So go ahead. But I don't know where the deferred rebate has any connection. That is the thing I object to.

Mr. Hupper: You are not suggesting that should be——

Mr. O'Connor: Yes. I suggest they are being practiced by ships that leave United States ports and return to United States ports, and on the way they are being used, and that the Japanese Government is now bringing action against the American President Line.

Mr. Hupper: You are not talking about any practices by the lines that are involved in Docket No. 684.

Mr. O'Connor: No, but I am talking about——

Mr. Hupper: I object to any outside matter.

Mr. Galland: I object to the American President Line.

[fol. 725] Examiner Robinson: I don't think there is any connection.

By Mr. O'Connor:

Q. Mr. Crinkley, this morning when you were talking about activities in the North Atlantic during 1947 and 1948, and you referred to meeting the competition of the Conference lines on a competitive basis, it is a fact, is it not, that the contract system was not in use in that trade at that time to any extent, any considerable extent?

A. Since March 2, 1948, and with the exception of five items, the Conference contract system has not been used on this trade.

Q. Concerning the proposal by these two Conferences to establish the Conference rates practically completely except for corpses and those few things left out in these trades, the fact is, is it not, that they were going to take as the contract rate the rate available to those who signed the contract, the rate which had currently been charged in that trade as the tariff? Is that correct?

A. Yes. The exhibit that was made showed that it was clearly announced and intended and filed that the tariff rates that had been applying right along, the current rate, was to become the Conference contract rate, and that the non-contract rates were to be on the basis of 20 to 25 per cent higher.

[fol. 726] Q. How long would you say that those rates had generally been used in that trade?

A. Well, I think, offhand, probably 75 per cent of the rates in effect November 1st had been in effect since March 2, 1946, and probably prior to that.

Q. That would be——

A. I imagine they were the rates carried over from WSA.

Q. For nearly three years these shippers in those trades had been getting those rates?

A. Yes. There have been adjustments, of course, and I would say 75 per cent, possibly, might have been adjusted.

Q. So that when a shipper signed up a contract, if the

injunction hadn't deterred them from so doing, if he had signed up a contract, he would not have received any reduction in the rate he had been paying, would he?

A. Not under the announcement and under the tariff sheets that were filed.

Q. But anybody who refused to sign the contract would pay an addition of at least 20 per cent over and above what he had been paying for about three years? That is a fact, isn't it?

A. That is a fact.

Examiner Robinson: In other words, the rate was upped to the non-signers?

The Witness: Yes. There was no discount to a man who [fol. 727] wouldn't sign a contract. He was going to be set up 20 to 25 per cent if he didn't. There is no question about it.

By Mr. O'Connor:

Q. Those rates would run above 25 per cent, wouldn't they, some of them?

A. I haven't examined it. I know they run 20 and 25 per cent—and above, oh, yes.

Q. Now, on the Westbound Conference, some of the rates would run as high as 40 per cent, or so, wouldn't they, or have you examined that?

A. I haven't examined all the items in there. I noted that it varied from 20 per cent up. Let's see. Here is the first item, where the rate was 17½, and it went to 30 on the non-contract basis. And I imagine——

[fol. 728] Q. What are you looking at, westbound?

A. The eastbound.

Q. Well, now,——

A. On others it was 20 per cent. And here is one that was 50 and went to 70.

Q. That is 40 percent?

A. That is 40 percent, yes. And here is another that is 25.

Q. The man who had advantage of that rate shipping goods from Antwerp to New York, if he didn't sign up a contract, he had to pay 40 percent more for the transportation of his goods?

A. 20 to 40 percent more, yes.

Q. Mr. Hupper called your attention to two paragraphs or so from the conference agreement No. 4490, that is, the North Atlantic Continental Freight Conference group, that being Exhibit 1-C, and those two paragraphs appearing on the second page of that exhibit, and he particularly called your attention to the paragraph which says: "In the emergency of disturbance of rates by non-members"—that means you, doesn't it, the non-members?

A. At that time it undoubtedly meant us.

Q. "—which, in the unanimous opinion of either group, as hereinafter provided, warrant greater flexibility of rates the members then operating to Antwerp or Rotterdam as one group and/or the members then operating to Hamburg or Bremen as another group, shall by inde- [fol. 729] pendent and unanimous action of either group, specifically recognize such emergency by declaration to the conference which shall be recorded in the minutes. Said declaration shall provide just and fair methods by which such competition may be met and said competition may be met pursuant to and within the limits of said declaration. In the event of such declaration by either group any member of the conference may make such reservation as may, in its opinion, be necessary, consistent with said declaration, to protect its individual interests. Such reservation shall be made a part of the declaration aforementioned."

A. Yes, sir.

Q. Now, do you understand that such emergency to preserve the flexibility of rates was nothing more or less than a threat to your company as to what would happen to you in an emergency?

A. Well, I consider that that provision simply meant that if our competition was felt very strongly that they might undertake all sorts of moves to smack us down.

Q. That is the way you interpreted that clause, didn't you?

A. Yes.

Q. That was another club they held over your head?

A. Yes.

Q. Now, getting back to the word "cartel"——

Examiner Robinson: Mr. O'Connor, I am sure with all [fols. 730-732] this array of talent there are some of them who have work to do at their offices this afternoon, so if it is all right with you, let us adjourn until morning.

Mr. O'Connor: It is very agreeable to me. I would liked to have adjourned earlier.

Examiner Robinson: Very well.

We are adjourned until ten o'clock tomorrow morning.

(Whereupon, at 4:30 p.m., the hearing was adjourned until Wednesday, May 11, 1949, at 10:00 a.m.)

[fol. 733] Met, pursuant to adjournment, at 10:00 a. m., May 11, 1949.

[fol. 734] PROCEEDINGS

Examiner Robinson: Gentlemen, if we are all ready we can start.

MATTHEW S. CRINKLEY, resumed the stand.

Cross-examination (Continued).

By Mr. O'Connor:

Q. Mr. Crinkley, yesterday there was a discussion with you as to these penalties on shippers in case they violated the exclusive patronage contracts and shipped with you or another independent. In your experience in the trade, have you ever heard of any shipper who has been sued to collect those fines or penalties?

A. No, I have not.

Examiner Robinson: That includes any trade that has the contract?

The Witness: In my own experience in the shipping business and otherwise, I have never heard of a shipper being sued under the penalties.

Examiner Robinson: In any trade?

The Witness: That is right. But I know many of them fear it.

By Mr. O'Connor:

Q. In other words, you said yesterday it was a threat [fol. 735] held over the heads of the shippers?

A. It very definitely is. There can be no question about that.

Q. In this North Atlantic trade—you may have testified to this, but I have forgotten if you did—before World War II, the Germans were in that trade, weren't they?

A. They were. There were German lines in the trade, yes.

Q. And there was a Japanese line?

A. Yes, that is right.

Q. And the Red Star line?

A. To Antwerp, yes.

Q. Was Watermann in that trade before World War II?

A. Not in the North Atlantic trade, no.

Q. Now, as to the imposition of the exclusive patronage contract system in that North Atlantic trade before World War II, on how many articles or commodities or items in the tariff schedules would you say it was imposed by this conference?

A. My estimate is between 100 and 200.

Q. Out of a total of how many items?

A. Approximately 2,000.

Q. That would be between five and ten percent?

A. That is right.

Q. Now, this discussion of the word "conference," and [fol. 736] the word "cartel." You were taken to task yesterday for not using the sweeter, politer word "conference." In the 1916 Shipping Act, or any other shipping act, have you ever seen the word "conference" used?

A. No, I don't recall any mention of the word "conference" in the 1916 Act.

Mr. Hupper: It is distinctly there if I know what you are talking about. "Conferences and other arrangements."

Mr. O'Connor: I wish you would point it out to me, Mr. Hupper.

The Witness: I don't recall. My recollection is mostly that line "agree."

By Mr. O'Connor:

Q. Combinations and agreements, is that it?
A. Yes.

Mr. Hupper: Here is the language right now (indicating to Mr. O'Connor).
Mr. O'Connor: All right. I will look at that. That is right.

By Mr. O'Connor:

Q. "Understandings and other a r r a n g e m e n t s." Wouldn't "understanding" sound a little sweeter than "conference"?
A. I don't know. The word "conference" is pretty widely in use in other than the steamship trade, but it [fol. 737] doesn't mean the same thing at all.
Q. What the conferences are doing here is the same thing that organizations which call themselves "cartels" are doing otherwise?
A. That is my understanding very definitely.
Q. Now, following World War II, and up to the relinquishment of control by UNRA on March 2, 1946, as I understand it, none of the tariff items in this trade were put under contract by the conference, is that correct?
A. In this trade none of them were put under the conference in the period from the war until March 2, 1946.
Q. Now, what was the next move in reference to putting any items under the contract system?
A. Well, I believe approximately 10 or 12 months after March 2, 1946—I don't have the exact date in mind——
Q. That will be about the beginning of 1947?
A. Somewhere around there. This particular conference sought to impose the exclusive patronage contract system on relief goods by socalled gentlemen's arrangements, or secret understandings, without any written papers as concerning the CARE organization.
Q. When you refer to relief goods, you refer to the goods sent by relief organizations in this country, such as the Jewish relief and——
A. Mostly religious groups.
[fol. 738] Q. And the Catholic organizations?

A. Yes.

Q. They were sent to destitute people abroad, is that correct?

A. That is right.

Q. And they were paid for out of funds contributed by the citizens of this country?

A. That is correct.

Q. And under an arrangement, the freight on those goods was paid out of the treasury of the United States, the taxpayers' money, isn't that correct?

A. Not exactly. At first the freights were paid out of contributions by the people that contributed the goods and the money for the goods. And then later on Congress made a provision that on those shipments which moved to certain countries the treasury would refund the freights.

Q. Well, on those goods which moved to certain countries upon which the Treasury would refund the freight, were those organizations approached by the conference to sign a contract, or to make an oral arrangement to deal entirely with them?

A. They were.

Q. The fact is, is it not, that during that period and before the establishment of the Economic Cooperative Administration, commonly called ECA, that Congress ap- [fol. 739] propriated some $5,000,000 for the payment of the freight on these relief goods, is that not correct?

A. It did.

Q. And your company had transported some of the relief goods for various organizations, as a matter of fact, is that right?

A. Yes, we did.

Q. And some of the organizations for which you had handled their goods, came to you and told you of the conference having approached them?

A. They did.

Q. Some of them told you the conference had tied them up?

A. Yes.

Mr. Hupper: Are you testifying, or is he?

Mr. O'Connor: I am trying to take the short-cut.

Mr. Hupper: Go ahead.

By Mr. O'Connor:

Q. Is it a fact that you complained about this matter to the Government authorities?

A. Yes. I complained to the committee, or whoever it was that was to pass on these freight bills, and I also complained to the Comptroller General, and told him I didn't think it was proper for public moneys to be spent on these refunds of freight where arrangements had been made that would destroy any possibility of competitive freight rates being applied.

[fol. 740] Q. Under the conferences these goods, or a portion of them, were traveling on foreign lines, were they not?

A. Yes, oh, yes.

Q. And you had an experience with this organization CARE, did you not?

A. I certainly did.

Q. Will you state that experience?

A. CARE approaches my company concerning a rate on food packages for Germany which they kept in storage there in filling the orders from German warehouses rather than individual shipments from here. They told me the rate they were being assessed was too high, in their opinion, and they had sought from the conference some adjustment, and had been refused. They wanted to know if my company would extend to them a reasonable rate, which they contended they were asking for. At that particular moment my company was not sending its vessels to Bremen except on occasion with Army cargo. They offered a substantial shipment, enough to justify a call at Bremen, if we could agree to meet the rates that they considered reasonable.

After studying the matter, I decided their request was reasonable, and we made a booking of 80,000 packages based on that rate for a given shipment, a given ship, and a given position. Some time shortly before the sailing date of that [fol. 741] vessel, and after I had booked some additional small shipments for Bremen, I received word from the broker representing CARE that this booking was to be cancelled. I refused to cancel it. The broker then answered if I would go with him to the CARE office and discuss with one of the directors this business. I said yes, I would.

And when I went over, this gentlemen told me that the conference had told him that they would meet the rate that they wanted if they would make an agreement to ship only with conference lines, and that this arrangement would take in ports other than those at which the vessels of my company called. They said, "You see, the conference has put the squeeze on here so that we can hardly afford not to take their proposition, because it involves shipments to ports at which your vessels don't call."

I said, "Well, of course, they have met the rate after they have seen and learned you had made the booking with us. You made a booking with us in good faith. We have scheduled a vessel for Bremen. We have taken other small amounts of cargo on the basis of the vessel going there, and we refuse to cancel the booking. This kind of dealing is not very honorable. It wouldn't be for a commercial organization, and it is even worse for a socalled charitable organization. So far as the ethics of the conferences' move on it, there is no need for me to discuss it. But so far as CARE is concerned, we wanted that shipment and expected to get it."

[fol. 742] It wound up that we got it, and we never got any more food packages.

Q. Is it a fact that thereafter goods moved to that port in Europe, shipped by CARE, on lines of this conference?

A. Yes, altogether.

Q. And on foreign ships?

A. Including foreign vessels. In other words, this was something equivalent to the conference exclusive patronage contract system, except it was verbal and a socalled gentleman's agreement.

Q. Now, as to the charitable organizations for which you shipped goods, the freight of which had been paid for by American citizens, or out of the Treasury of the United States, did you have any other experience with the conference coming in and tieing them up?

A. Yes. There were 10 or 12 relief organizations—the Church World Service was one, representing several church organizations—and contracts were proposed to those organizations, and accepted by them on the same basis, in order to get the rate, the advantage of the number of sail-

ings involved, and also to get the advantage that was offered at that particular time to ports at which our vessels did not call. Some of those organizations did sign such conference exclusive patronage contracts.

Q. Thereafter you did not get that cargo?

[fol. 743] A. I was not able to participate in that business.

Q. Now, you mentioned this gentleman's agreement, or oral understanding. Do you know whether or not that oral or verbal understanding was ever filed with the United States Maritime Commission pursuant to the provisions of the last tenant of the first paragraph of Section XV of the 1916 Shipping Act?

A. To my knowledge it was not filed, but of course I can't be absolutely certain. I don't know what papers are filed with the Commission. But so far as all their public releases and the sources of information I have, I have never heard of it being filed. I believe there was an agreement not filed.

[fol. 744] Examiner Robinson: The basis of that, Mr. O'Connor, is that there was no agreement between carriers, was there?

The Witness: Yes, sir, there was——

Examiner Robinson: I think it was an agreement between the charitable organizations as shippers and the carriers. Maybe I missed the point.

Mr. O'Connor: There is a point here as to whether the agreement with the shippers should be filed.

The Witness: Let me say——

Mr. O'Connor: There is the issue as to whether this form of contract agreement should not only be filed but also approved.

The Witness: Let me say, there could not have been an agreement made by this group of lines CARE, except they made an agreement among themselves. It is impossible. This group of lines, as I understand, are charging—I don't know the rate—$1.65 a hundred pounds on food packages.

Examiner Robinson: That is the agreement you meant? I thought you meant the one with the shipper.

The Witness: Both. The one with the shipper was in effect a Conference exclusive patronage contract, except there was no contract in view signed by either party on paper. That was one thing. But it couldn't have been done

at all except an agreement had been reached between the [fol. 745] lines to do it, and I don't think that agreement has been filed. I think the whole thing was an unethical, dirty proposition, and unlawful besides. But it has a bearing on this exclusive arrangement I am talking about. They made exclusive arrangements with that semi-public organization, and my company, with American ships, haven't been able to participate in the transportation of food packages since that time. Not one. Not one food package.

By Mr. O'Connor:

Q. Well, now, when the ECA was set up, and the countless millions provided to pay for the freight on these relief goods, did you have similar experiences there?

A. Payment of these relief goods for——

Q. For the transportation of these relief goods?

A. Are you talking about the so-called Marshall Plan shipments, or relief by charitable organizations?

Q. I am talking about the Marshall Plan shipments now.

A. Yes, we had an experience along that line, too. As is generally known, in Germany, the shipments to which are largely financed through ECA, the American Agency, or American-British Agency, is a joint export and import agency called JEIA——

Q. Will you spell that out?

A. J-E-I-A.

Q. What does it stand for?

[fol. 746] A. Joint Export and Import Agency. When they began to import consumer goods and commercial goods for use in German industry, they invited quotations of freight rates by various carriers. One of the first items that was involved, to my recollection, was truck tires—rubber tires for trucks. I presume that the Conference gave a quotation on it. My company did, and we secured a rather large shipment, possibly the first such shipment made to Germany.

Very shortly thereafter the Conference put before the exporters of the rubber tires these exclusive patronage contracts, and were able to induce or force a number of the substantial shippers to sign such agreements, the effect of

which then was that shipments of those commodities moving to Germany, paid for by the taxpayers of this country, were closed to my company and its American ships.

Mr. Hupper: What year was that?
The Witness: 1948.

By Mr. O'Connor:

Q. Well, now, I was diverted. You had been handling some of those rubber tires?

A. We did handle some, yes.

Q. And after the Conference entered into arrangements with rubber companies, did you handle any of that?

A. We did not handle any after that from most of the larger manufacturers and exporters. We handled a small [fol. 747] quantity for small exporters.

Q. Did you talk to some of the large exporters about the situation?

A. Yes. I talked to all of them.

Q. Did they tell you they had tied themselves up with the Conference?

A. Yes.

Q. What did they say, if anything, about their inability to continue the deal with you?

A. They simply said, "We have signed an agreement with the Conference to ship all of our shipments with Conference lines, and we can't ship with you."

Q. You had done business over the years with some of those companies, had you not?

A. Yes. That year. That same year I had done business with all of them. Some of the business, not all the business. Some of them very little, and some of them practically all of it.

Q. Had your relations been friendly?

A. Yes.

Q. Did they ever express any dissatisfaction with your service?

A. Not as a general rule. One of them, I believe, at one time was rather a little put out because of a shut-out, but generally speaking, no dissatisfaction with our service was [fol. 748] noted

Q. Did they tell you that the only reason they couldn't further deal with you was because they had signed up with the Conference?

A. Very definitely.

Q. Did they express regret at the situation?

A. Well, I don't believe I can say that. Some of them did, but not all by any means.

Q. What companies were they you are talking about now?

A. The large rubber companies—Goodyear, Goodrich, Firestone, United States Rubber.

Q. All of those companies?

A. They are the principal ones. I believe all of those signed up. I am pretty sure they did.

Q. Now, under the Marshall Plan as administered by ECA, our Government pays the freight on relief goods which are contributed by citizens for destitute people in Europe and China, too?

A. I don't believe the citizens, but it is by recognized organizations, charitable and religious.

Q. Paid out of the Treasury of the United States?

A. Yes.

Q. Now, did the North Atlantic Continental Freight Conference go in there and tie up that situation, too?

A. Well, that is part of the same contract setup that they [fol. 749] applied on relief goods about a year after March 2, 1946.

Q. And you have taken that matter up with the ECA, have you not?

A. Several different times. My contention was that if public money was paying freight, the same obligation rested there that would on any Government department, that is, that they must buy competitively, and it shouldn't be possible for the shipments to be tied up by exclusive patronage contracts, where the shippers couldn't go into the market and get the most reasonable price available at any given time.

Q. You contended that when the Government, when the taxpayers' money was used to pay the freight, the less costly freight should be obtained?

A. The less costly consistent with the required service.

Q. That is a rule of Government departments generally, isn't it?

A. It is.

Q. In addition to tires, tinplate was put under the contract in 1948, wasn't it?

A. Yes.

Q. Was that along about the same time as the tires were?

A. Yes, I believe they were put out at the same time.

Q. Did you have any experience in reference to tinplate? [fol. 750] A. Yes. We had been carrying shipments of tinplate, and I suppose the other lines had, too, and this item was put under the contract, and some of the shippers that had been shipping with us told us they could no longer ship with us because of this contract.

Mr. Hupper: When was that?

The Witness: 1948, some time along late spring or summer—I don't recall the date.

By Mr. O'Connor:

Q. Then, in relation to the proposed installation of this contract system on all items in that trade as of November 1, 1948, some time prior thereto, was the proposal or effort made to put leaf tobacco under contract?

A. Yes. I spoke yesterday about this transaction that we had with JEIA, the Joint Export & Import Agency in Germany, where 20,000 tons of leaf tobacco was to be shipped to Germany. My company carried about one-half, or possibly a little more than half, at a much more reasonable rate than had been quoted by the Conference lines.

Q. Let me ask you, was that a Government shipment?

A. It was a Marshall Plan shipment in part, and partly paid for by the Department of Agriculture.

Q. It was all Government money involved?

A. All taxpayers' money.

Q. All right. Go ahead.

[fol. 751] A. As this shipment began to move, the Conference lines met the rate that I had established, and they carried a part of this large shipment.

At about that time, or along about the middle of November, the leaf tobacco trade, which centers mostly in North

Carolina, South Carolina, Kentucky, and Tennessee, were approached by the Conference in an effort to have all the tobacco shippers sign the exclusive patronage agreements.

Q. Approached by this North Atlantic Continental Freight Conference?

A. Approached by this particular Conference.

Q. Do you know what individual representing that Conference approached them?

A. I presume it was Mr. Andrews, I am reasonably sure, the Chairman of the Conference. They approved a Traffic Advisory Committee that meets in an advisory capacity for the leaf tobacco trade, and on which I formerly served when working in the tobacco business, and they offered to meet the rates that my company had established, if the trade would sign the Conference exclusive patronage contracts.

There was quite some debate going back and forth between various people in the tobacco trade at that time.

Q. There were meetings held in Washington?

A. In Richmond.

[fol. 752] Q. Which considerable people attended?

A. Yes. And there was considerable confusion. But my understanding is that some of the shippers signed the agreements. They considered that in shipping to Antwerp and Rotterdam, as well as Germany, that there would be times when they would need to use Conference vessels, and I believe some of the shippers signed these agreements, although, of course, our injunction made them inoperative.

Mr. Hupper: You were not at that meeting?

The Witness: No, I wasn't but I had very clear reports on it. I have a great many friends in the tobacco trade.

By Mr. O'Connor:

Q. All during the period you were in constant touch with the representatives of that trade?

A. Yes, sir

Q. Individually and in groups?

A. Yes, sir. I 'phoned them, and some of them called me, telling me what was going on. Incidentally, I have learned that even though our injunction was in effect, that one or two of the shippers have advanced the thought that since

they signed the contract, even though they are not operators there, that they are committed, and they would run some risk if they shipped with us, even while this injunction is running. Of course, I think——

[fol. 753] Q. I hope you will dissuade them from that decision and tell them that if we catch anyone violating the injunction we will yank them into Court.

Mr. Hupper: You sound belligerant this morning.

Mr. O'Connor: On that point, I am.

Mr. Hupper: You don't get ahead by being belligerent. You ought to stick to a few known facts.

By Mr. O'Connor:

Q. Mr. Crinkley, there has been some confusion, as I understand it, in reference to the obligation of an American shipper who has signed by the contract to carry out its terms by dealing with the Conference exclusively where the shipment is sent f.a.s., or under one of those terms of shipment, and the Conference has reached out, as I understand it, to claim the shipment even though the buyer is entitled—the buyer abroad is entitled to dictate the method and means of transportation.

Will you state your understanding of that?

A. In the European trade it has been customary, I suppose maybe for 100 years, for importers in Holland and Belgium and Switzerland, and possibly other countries, to purchase goods in this country and to make their own freight arrangements.

As a rule, those freight arrangements are made with large forwarding houses, many large and long-established for-

[fol. 754] warders in Europe who have branch offices or connections here.

The goods are purchased on a f.a.s. or f.o.b. basis, and instructions are given to these forwarding houses as to the shipment of the goods.

In some cases the shipments are delivered to the forwarding agent and shipped in the name of the forwarding agent as an agent for the buyer. On other occasions, the goods are shipped by the suppliers, the details being handled by the forwarder.

But in both cases, the shipments are purchased, as I say, free alongside or free on board.

Q. That is, f.a.s. or f.o.b.?

A. Yes, f.a.s: or f.o.b., which means the ocean freight is for the account of the buyer. Often times those buyers have instructed shipments to be made with us, and in times past, where the suppliers had signed a contract, naturally only covering those things they control, there has been some controversy with the Conference because those suppliers on those particular occasions, and on those particular goods, followed the instructions of the buyer who has the legal control of the routing of the shipment, and who had instructed shipment with us, and where the supplier had shipped with us.

Mr. Hupper: Will you be in a position to testify to those instances?

The Witness: I will be able to specify one from memory. [fol. 755] I will do it now, if it is desired.

By Mr. O'Connor:

Q. Go ahead.

A. The Wayne Pump Company—there is quite a back and forth between the Traffic Manager of that organization and this Conference. Some time just before the war——

Q. The Eastbound Conference?

A. Yes. He had a contract with the Conference on shipments controlled by his firm and made by his firm. He had one customer in Holland who insisted on shipping with us, and so instructed, and whose purchases were made either on a f.a.s. or f.o.b. basis.

A shipment was made with us in accordance with those clear instructions, the buyer certainly having the right to control the routing of the shipment. And the Wayne Pump Company was approached by the Conference and told that he had violated his contract.

Mr. Hupper: How do you know that?

The Witness: Because he told me that, and I have seen some of the correspondence.

By Mr. O'Connor:

Q. You have seen the correspondence?

A. I have. That is the reason I am naming names.

Q. Correspondence between the company and the Conference?

A. Yes. He told me about it, and showed me some of the [fol. 756] stuff that went back and forth on it.

And I must say, after some cat-*a*wauling, the Conference turned him loose on those particular shipments.

Mr. Hupper: However, the shipment did move by you as the purchaser desired?

The Witness: It certainly did.

Mr. Hupper: There was no objection——

The Witness: No. After he had the movement the Conference was jacking him up—why did you ship with Isbrandtsen this time, and so forth?

Mr. Hupper: He explained it?

The Witness: He explained it, and the Conference was not satisfied, and he defied them.

By Mr. O'Connor:

Q. Was the conclusion as happy in other instances as in that one?

A. Well, no. That is a great bone of contention in all the trades, as to the Conference's attitude on f.o.b. or f.a.s. shipments.

Q. They claim to control them under the contract, is that correct?

A. They claim that even though the supplier or the shipper may not control the routing, still he is obligated to ship with the Conference, which is a rather far-fetched proposition, I think, all the way through.

[fol. 757] Q. That is another threat to the shipper?

A. It is just a part of the Conference contract system, because the implication is he has violated the contract.

Mr. Hupper: You don't agree he has violated the contract?

The Witness: No.

Mr. Hupper: Have you other instances you want to stress?

The Witness: No. I could probably refresh my memory, but that is a sample.

Examiner Robinson: On f.o.b. shipments, do you ever have f.o.b. point of origin, or only f.o.b. ship?

The Witness: I usually mean f.o.b. ship, and f.o.b. ship needs rather a little explanation. In Europe port conditions are different than in this country. In this country freight rates apply from free alongside the vessel on outbound shipments, and free along ship on inbound shipments.

In Europe, that is different. The freight rates on inbound shipments to European ports cover stevedoring only to ship's rail. That is, the stuff has to be lifted out of the hold that far. Then the receiver pays the stevedoring from that point on the dock, or in a car or barge, or something of that kind. And on export shipments from Europe, the shipper has to pay the stevedoring to ship's rail or on [fol. 758] board. Then the shipper pays the cost of stevedoring and putting in the hold, and enslinging, and so forth.

F.o.b., as used by Europeans in his dealings contemplates that the stuff has to be put on the ship. However, in American ports, on an outgoing shipment, that really is not true, because the steamship line pays the entire cost from f.a.s.

Does that answer?

Examiner Robinson: Yes.

The Witness: From alongside ship. So there is no f.o.b. proposition on outbound shipments from United States ports. When the specification is made f.o.b., it is equivalent to f.a.s.

Mr. O'Connor: I think that is all.

[fol. 759] Mr. Hupper: In the use of FAS as contrasted with FOB, you are really indicating point of transfer of goods, where the title passes to the purchaser, are you not?

The Witness: Just one minute, let me examine that thought just a little bit.

Yes, yes, that is right, where the title passes when delivery is made alongside the ship.

Mr. Hupper: That is to say, the purchaser becomes the owner of the goods.

The Witness: In other words, he is the legal owner.

Mr. Hupper: When they became FAS.
The Witness: He is the legal owner of the goods, yes.
Examiner Robinson: All right, Mr. McDowell.

By Mr. McDowell:

Q. Mr. Crinkley, you have testified that last October an announcement was made in the trades covered in this proceeding that exclusive patronage contract and non-contract rate system was to be put into effect by the conferences involved here on all but nine of the commodities moving in such trades and covered by the tariffs of the conferences in such trades.

Mr. Hupper: Before you answer that question, Mr. Crinkley, let me refer to the point I made at the very beginning of this proceeding, that the Department of Justice [fol. 760] has no standing here except in aid of the Maritime Commission.

A. Yes, sir. As a matter of fact, attached to the material we put in evidence was a copy of the message from the office of the chairman of the conference to that effect.

By Mr. McDowell:

Q. That proposal and announcement of the institution of what I shall call the contract rate system then, as practiced by the conference, contemplated the creation of a new scale of rates with respect to the commodities to which the system was to be extended, is that correct?

A. Yes; the newspapers carried information to that effect.

Q. So that thereafter two scales of rates would be in effect with respect to the items covered by the contract rate system, is that correct?

A. That is true.

Q. The old currently existing rate on which shipments had been moving and should have been applicable on the items previously not covered by the contract rate system would become the contract rate?

A. That is true, as shown also by exhibits that we have filed in this case.

Q. And the new schedule of rates to be created would be from 20 per cent to perhaps somewhat higher on certain

items above the old previously existing scale of rates, to be known in the future as the contract rates, is that correct? [fol. 761] A. That is right. These new rates that you speak of to be the non-contract rates; and we have also put in evidence a tariff sheet of the conference which showed exactly how those non-contract rates, so-called, would be arrived at.

Q. Then, when we say under the contract rate system the shipper is offered lower rates agreeing to ship entirely by conference lines, the word "lower" is used in a relative sense to the non-contract rates, is that correct?

A. Well, it is simply not offered lower rates for signing a contract; they are told that if they don't sign they will have to pay higher rates, that is true.

Examiner Robinson: Let me get that straight. Is that strictly limited to this particular case, or is that in every trade?

The Witness: I am talking about this particular trade.

Examiner Robinson: I think his question was rather general.

By Mr. McDowell:

Q. I am talking at the moment about this particular trade.

A. In this particular trade, the contract/non-contract rate setup that was to be put into effect November 1st was not that people that signed the contract got a lower rate; it was that people, to get the existing current rate, would have [fol. 762] to sign a contract; and if they did not sign it and some time wanted to ship with any of the conference lines, they paid a much higher rate. There is no such animal there as a discount, or anything of the kind.

Q. You testified this morning, I believe, just now, with respect to the application of the conference contract rate to such particular items as tobacco and rubber tires and relief shipments.

A. Yes.

Q. In those situations, where the conference contract system has extended to those items, that came about by way of the conference meeting a rate which you had established as a reduction from the previously existing rate?

A. That is true.

Q. Which the shippers had been paying?

A. That is true.

Q. So that that, again, did not involve the offering of a lower rate by the conference in exchange for the contract agreement than was currently in effect by your line or by competitive traffic?

A. In other words, they did not offer a cheaper rate to shippers than they were at that time able to get.

Mr. Hupper: That means via your line as distinguished from a conference line?

The Witness: Yes.

[fol. 763] By Mr. McDowell:

Q. So that we have, then, under the contract rate system a distinction between a contract rate which is relatively lower than a non-contract rate, the contract rate being applicable on the shipments of those shippers who agree to patronize the conference lines occasionally?

A. That is true.

Q. The non-contract rate being applicable on the shipments of those shippers who do not agree to patronize the conference lines exclusively, is that right?

A. That is right.

Q. Is there any basis for the distinction between the relatively lower contract rate and the relatively higher non-contract rate other than the willingness of the shipper to agree to ship exclusively by conference lines?

A. There is no other consideration involved there.

Q. In your opinion, Mr. Crinkley, is that distinction discriminatory?

A. I understand that it is.

Q. And you understand that the only reason for the existence of the higher non-contract rate with respect to the shipments of the shipper who does not agree to ship exclusively by the contract lines is that refusal on his part to agree to ship exclusively by the conference lines?

[fol. 764] A. That is my understanding.

Q. There are no differences in the transportation services provided under these two rates?

A. I don't understand that there are any differences.

Q. The two rates are in effect at the same time, by the same sailings on the same lines, with respect to the same items of traffic?

A. That is right.

Mr. Hupper: Are you going to ask him anything about frequency of service and range of ports?

Mr. McDowell: I propose to get into that, yes.

By Mr. McDowell:

Q. Under the conference contract rate system as sought to be effectuated in the trades involved in this proceeding, is there a provision for a penalty to be applied with respect to past shipments or future shipments of a shipper who should have agreed to confine his traffic exclusively to conference lines and thereafter should ship by your line?

Mr. Hupper: I object to that question. The contract form shows what the provisions are, and a matter of opinion about it has no place in this record, I respectfully suggest.

Mr. McDowell: I am not asking for an opinion, Mr. Hupper; I am asking for the witness' understanding of the facts. [fol. 765] Examiner Robinson: Read the question back.

Mr. Hupper: The document itself speaks for itself.

(The reporter read the pending question.)

Mr. Hupper: I suggest, Mr. Examiner, that that clarifies my objection, and my objection should be upheld. The document itself speaks for itself, and I venture to say that the word "penalty" does not appear in there. It would be a distortion to so describe it.

Examiner Robinson: Technically, I think Mr. Hupper is right; but I do not think that question is not any worse than some of the questions that were propounded yesterday in the relation to other objectionable features, so I will let him answer it.

A. There is a clause in that contract that imposes a penalty, or what I might call a reprisal for any shipper who has been forced to sign with them, but who may, after such time, ship with my company.

Mr. Hupper: Are you referring to those liquidated damages?

The Witness: I am referring to that part of it there that says in effect that if a shipper ships with us, he will take two types of freight involved, as a fine.

Mr. Hupper: Or liquidated damages.

The Witness: Or liquidated damages, or whatever it is called.

[fol. 766] By Mr. McDowell:

Q. Mr. Crinkley, in addition to this provision for what you consider a penalty, and which Mr. Hupper has just referred to as a provision for liquidated damages——

Mr. O'Connor: A fine, I call it.

Q. —would there also be involved a cancellation of the shippers' contract?

A. I understand that in the case of a so-called violation, not only might a penalty or liquidated damages provision be imposed on the shipper, but in effect, the contract would be cancelled, and he would be forced in the future to pay the non-contract rate; and all this on common carriers, mind you.

Mr. Hupper: You are referring again to the contract form, are you not?

The Witness: Yes. This is not what we would call, in domestic transportation, a contract carrier; these are common carriers. So after such time of a so-called violation, a shipper, a common carrier, would have to pay 20 to 30 percent more than other shippers shipping on those common carriers, because he had shipped with my company on its American ships.

Q. Do you consider that to be a retaliation against a shipper?

A. I don't think you can consider it any other way.

Q. You are there referring both the provision for the [fol. 767] payment of a penalty in the form of liquidated damages, and to the necessity of paying a higher non-contract rate on future shipments by conference lines?

A. I was speaking of both as being in the form of a reprisal for any American shipper that might ship on our American ships who had been forced to make an agreement

with these conferences, composed of foreign and American lines.

Q. Do you consider such an arrangement to constitute retaliation against a shipper?

A. I said I don't think it is anything in the world but that.

Q. And the reason for the retaliation is, in your opinion, simply the fact that the shipper had patronized a non-conference line, an independent line?

A. That is true.

Mr. McDowell: Mr. Hupper, did you want to get something in on that point?

Mr. Hupper: My question was a little too soon.

Mr. McDowell: I didn't mean to interrupt you.

Mr. Hupper: Well, I didn't mean to interrupt you. I was not listening closely enough.

What I wished to do merely was to have it understood that Mr. Crinkley was referring to a situation where that contract had been made by a shipper.

[fol. 768] The Witness: I think I brought that out in my answer, didn't I, sir?

Mr. Hupper: I think it is clear now.

Mr. McDowell: I think it is clear, but just to make certain, I want the record to show we are talking about a situation in which the shipper has agreed, has entered into what I believe is called the conference freight agreement, under which he agrees to ship exclusively by members of the conference, and thereafter makes a shipment by a non-conference line.

Is that your understanding, Mr. Crinkley, that you have been discussing that?

The Witness: That is my understanding, that those two features that could be exercised against him constitute penalties and reprisals.

By Mr. McDowell:

Q. I believe that you did testify that you considered that a retaliation or a reprisal against the shipper for having patronized another line?

A. In my opinion, there is no doubt about that, constituting a penalty or a reprisal.

Q. In your opinion, Mr. Crinkley, as the principal traffic officer of the Isbrandsten Company, having intimate business contracts with shippers in the trades, does there exist a fear among the shippers that should they not agree to ship [fol. 769] exclusively by conference lines, or after having so agreed, should they thereafter ship by your line, or a non-conference line, that such shipper might incur retaliation by the conference lines in the form of refusal space accommodations or other retaliatory measures?

Mr. Galland: May we have that question again? I did not get that.

Mr. Hupper: I object.

Examiner Robinson: I think that is rather broad.

Mr. Hupper: It is highly speculative and calls on the imagination of Mr. Crinkley in a situation where the interests of himself and his company would bring forth an affirmative answer without any basis whatsoever.

Examiner Robinson: I am perfectly willing to have him answer the questions on the basis of what the shippers have talked to him about; that is perfectly in order but up to this point we have had nothing in here to show that there has been any information at all that someone cannot get any space. That is rather the injection of a new issue.

I see what you are driving at, all right, but why don't you just ask him what conversations he has had with the shippers, let him volunteer what they told him?

Mr. Hupper: The question is merely directed to a propo- [fol. 770] sition that the shippers all over the place are terrorized by the conference lines; and there is nothing in it, and he cannot talk about it, because he knows nothing about it; the thing has never happened, and there is nothing to suggest that it ever would happen.

Examiner Robinson: It is perfectly all right for you to ask him about any conversation he has had with shippers, and the reactions he got.

Mr. McDowell: I want to find out, Mr. Examiner, that the question is directed to the witness' knowledge, if he has any, concerning the state of mind of shippers with respect to those matters.

Examiner Robinson: It is all right. You go ahead and

ask him that: it is perfectly proper, but you are rather injecting something into his mouth here at the moment about refusing space. Just ask him what he has found out in talking with shippers.

Mr. Hupper: He cannot have an opinion that is not based on facts. He is not here in indulge in vain imaginings.

Examinar Robinson: No, but he can tell what the shippers have told him.

Mr. Hupper: All right, let him name the shippers that have told him as to their fears.

[fol. 771] I suggest that short of an event or a circumstance where shippers have been told that they will not have space in the future for which they have not applied, for which no application has been made, this line of approach is entirely out of order.

Examiner Robinson: Go ahead, Mr. McDowell.

Mr. McDowell: I just want the record to show——

Examiner Robinson: Go ahead, you may proceed.

Mr. McDowell: I understand your ruling, then, is that the point is relevant?

Examiner Robinson: Certainly, it is relevant.

By Mr. O'Connor:

Q. Mr. Crinkley, can you say whether or not there is fear amont the shippers that their refusal to enter into a conference, exclusive contract arrangement, or their shipping with an independent, non-conference line, after having entered into such an arrangement would lead to retaliation and discrimination or reprisals by the conference lines?

Mr. Galland: I object to that question, on this ground, that what we are investigating here is the lawfulness of the contract system, with specific reference to the propriety of the type of contract which the shipper is asked to sign and does sign in these trades. There is no question [fol. 772] that if the shipper suffers discrimination or retaliation as a result of not signing a contract, the situation is entirely different from the situation as to what the consequences are of violating the contract after it has been signed.

Examiner Robinson: Yes, but the Department of Justice has intervened, and it has been granted permission to intervene by the Commission; one of the things that they alleged is that there has been violation of Section 14, which includes retaliation.

Mr. Galland: What I object to is the assumption in the question that the problem is the same where a retaliation is made in the absence of signing a contract as where a penalty is enforced or perhaps sought to be enforced after the signing of the contract. I think they are two different problems and I think that they are wrapped up in the same package in Mr. McDowell's question.

Mr. McDowell: I am inclined to agree that they are two different problems, but I don't believe they are wrapped up in the same package. The question is stated in the alternative, Mr. Examiner.

I think we might have the question read back. It also asks the witness whether or not he can state as to the facts of this matter.

Examiner Robinson: This has gone on so long now that [fol. 773] I think it would be easier for you to say it over again than for the reporter to have to find it.

By Mr. McDowell:

Q. Can you state whether or not there is a fear among shippers of retaliation or discrimination or reprisals from the conference lines by reason of the shippers either refusing to agree to patronize conference lines exclusively, or by reason of the shippers having, after having so agreed, thereafter patronized a non-conference, independent line?

Mr. Galland: I think that is the same question that the Examiner directed Mr. McDowell to split into two parts.

Mr. McDowell: He didn't direct me to do that at all.

Examiner Robinson: I did not direct that, but I ruled it was all right.

Mr. Hupper: Mr. Examiner, if we are going to talk about fears here of people, we will be here forever.

Examiner Robinson: Well, you have a right to cross-examine him.

Mr. Hupper: I know, but I also have a right to an orderly proceeding, and I am not being required to cross-examine

about such insubstantial things as fears, unless there is some factual basis for them, and not fear talk about what [fol. 774] people imagine.

I might think that some time I would die, and therefore I would arrange my affairs differently from what I am doing today. That would be a fear, but it is nothing that could be the subject matter of evidence, testimony; and this proceeding should not go so far afield.

Mr. McDowell: Mr. Examiner,——

Mr. Hupper: Let me finish my observation, please.

Mr. McDowell: I am sorry. I thought you had finished, Mr. Hupper.

Mr. Hupper: When you say the Department of Justice is here in relation to possible violation of Section 14, I say to you that the Department of Justice, as I have said before, has no business here in respect to such matters. We are dealing with the contract rate question, and if there is a violation of Section 14 or any other section of the Shipping Act, that is within the province of the Maritime Commission, and there is ample law to correct the situation by its processes, without the intervention of the Department of Justice.

I venture to suggest that the Department of Justice is here now solely in aid of a purpose that it has in another case, which has nothing to do with this case, and I object to this case being messed up with that or having in this case any questions that relate to that and not to this, [fol. 775] by virtue of the issues that arise on the complaint here or the answer here.

We are going far afield, for no good purpose, and I object to it.

Mr. McDowell: Mr. Examiner, I might say for the record that without undertaking to answer statements made by Mr. Hupper, I take full exception to them.

I think that matter is full covered. But I want to speak on the question of the pertinence of the matters we are discussing with the witness. I think we all have to recognize that these questions are directed at a state of mind of the shippers, and that of course, notwithstanding Mr. Hupper's dissent, is as much a fact as the state of a man's digestion.

We have Lord Bowen's famous dictum on that in Edington versus Fitzmaurice (Law Reports 29, Chancery Division 459), in which Mr. Hupper might be interested.

Mr. Hupper: Are we going into digestion here today?

Mr. McDowell: We have a ruling squarely on this situation in the Greater New York Live Poultry Association case.

Examiner Robinson: Mr. McMcDowell, I am all in your favor. I have ruled it is perfectly all right, and the witness [fol. 776] may answer. Then, you can find out what the answer is premised on; and if the answer is no good, you haven't any foundation for it, then it is not worth anything. But he is certainly entitled to propound that question and get an answer to it, Chancery to the contrary notwithstanding.

Mr. McDowell: May we have the question read back, please?

Examiner Robinson: Do you remember the question?

The Witness: Yes.

Examiner Robinson: Then it is not necessary to read it back.

[fol. 777] A. I am not a lawyer and I don't understand a good many things that go on in a hearing of this kind, but I think the thing has very direct bearing, because that I am not——

Examiner Robinson: Wait a minute; don't misunderstand. We have already decided, at least I have, whether or not I am right or wrong, that it has a direct bearing. You tell him what you found out, what the state of mind is.

A. (continuing) I find often times that I am not able to get the business from an American shipper because he needs more service than I could provide; he feels that he must do business with the Conference. He would like to do business with the Conference and with us, and there is no reason why he should not, but he is fearful that if he does not sign the Conference contract it may be some time in the future when he would be subjected to what we say is a little punishment; or when we seek the people and they say they have a contract and the question comes up as to whether they would ship with an independent carrier, they do fear retaliation, by either the imposition

of these improper and unlawful penalties and reprisals, or by any other means, and many times they are mentioned.

Mr. Galland: Now, Mr. Examiner——

Examiner Robinson: Just a minute. I am not going to shut you off, Mr. Galland, but let us have a five minute [fol. 778] recess. You may say anything you want.

(A recess was taken)

Examiner Robinson: On the record.

Mr. Galland: Mr. Examiner, before the recess I was about to say that I understand that this testimony as to what the shippers think was ruled proper upon Mr. McDowell's argument that the state of a shipper's mind is as much a fact as the state of his digestion, which I suppose is true; but it is only true if you are talking about some particular shipper.

If you want to find out about the state of mind of shippers, you have to know what shippers, just as much as you would have to know what shippers if the question was, "Do all shippers have stomach ulcers?" Some do and some don't.

Now I really think that these efforts are not aided in any way, I think they are very seriously damaging, when the witness is permitted to say that "shippers think" one thing or another, or "shippers are fearful" of a particular consequence.

I think that Mr. Crinkley should be called upon to say what shippers fear retaliation in the form of refusal of space if they don't sign up a contract.

Mr. McDowell: Mr. Examiner, may I say——

Examiner Robinson: My observation on that is that that [fol. 779] goes primarily to the weight of his testimony, and not to its relevancy.

If you want to bring out that fact, or point that fact out, and he does not seem to give any, then it has to be judged accordingly.

Mr. Galland: I am pointing out by making an objection to this line of questioning, except on a shipper by shipper basis. I think it not only goes to the weight of the testimony. I think it is a wrong and unreliable kind of testimony.

Examiner Robinson: I can see objections to it but I still think it should be submitted, to come in, with all those unreliabilities attached to it.

Mr. McDowell: I may say that the Examiner's views are supported by a direct holding of the Court of Appeals for the Second Circuit, in Greater New York Live Poultry Chamber of Commerce versus United States, in which testimony was received concerning the state of mind generally of live poultry receivers, receivers of live poultry produced in the markets in the New York area; and I would suggest further that perhaps we would make more progress if I could proceed with the examination and then, if others want to bring out various points I do not cover, they would be perfectly free to do so.

Examiner Robinson: That is my idea, that any weak-
[fol. 780] nesses that they can point out by themselves may be pointed out, but I am certainly going to let it come in unless it gets to be more hearsay than it has been so far.

Mr. Galland: I don't know how that is possible.

Mr. Hupper: It is completely hearsay so far, just plain imaginings.

Examiner Robinson: We will let it go in, and if you can get anything more out of him, all right; if you cannot, just point out the weaknesses. I think I can realize its limitations.

Mr. Galland: I want it understood that I am not trying to shut out this testimony, and if there are any shippers that do harbor these fears, it should come in.

Examiner Robinson: I understand.

Mr. Galland: I am not trying to choke out the record; I am merely talking about the kind of testimony that I think is improper.

Mr. McDowell: If counsel is dissatisfied with the state of the record after my questioning, I think he is then free to straighten it out.

Examiner Robinson: I think we will proceed. I think we all understand each other.

Mr Hupper: I have made my objection, I could not make it more forcibly, and I consider the testimony, no matter how it is developed, along the lines that are now being

[fol. 781] developed, along the lines that have been permitted by the Examiner, to be objectionable.

Mr. O'Connor: He has not been permitted to answer the question yet, in my observation.

Examiner Robinson: We will proceed.

Mr. Hupper: Just a minute. I was interrupted by Mr. O'Connor.

Examiner Robinson: Sorry, sir.

Mr. Hupper: I think that no testimony of this kind, in the absence of a showing that some people have been refused contracts, are told that they shall not have contracts, can have the slightest relevancy or use in this proceeding, and that it is a distinct disadvantage to the proceeding because it is purely speculating about things that are without substance. I think it is against the purposes of the administrative body as established by the Shipping Act.

By Mr. McDowell:

Q. Mr. Crinkley, one of the points which you have referred to, one of the matters you referred to in answer to the last question before the recess, was the matter of frequency of service. I would like to go into that matter a bit.

Your line is the only non-Conference independent line which has been furnishing regular service in the trade here involved over a substantial period of time, is that correct?

[fol. 782] A. My company has provided regular scheduled sailings since 1931. That schedule has been as well maintained from the standpoint of regularity as any line in the trade, Conference——

Mr. Hupper: You are not talking about the Isbrandtsen Company, Inc., the complainant here, since 1931, are you?

The Witness: Well, let us say this, then: My present company, Isbrandtsen Co., Inc., and the previous company that operated in this trade before, and which we succeeded, these two companies.

Mr. Hupper: Operated by foreign flag ships.

Mr. O'Connor: I object.

Mr. Hupper: That is right, isn't it?

Mr. O'Connor: I object to Mr. Hupper's interruptions.

Mr. Hupper: Let us get the things clear as to what "we" have been doing.

Mr. O'Connor: You will have your chance to cross-examine him on that.

Mr. Hupper: Well, we ought to have the facts right when he answers the questions.

Mr. O'Connor: You can clear them up later.

Mr. Hupper: I am not here just to waste my time.

Examiner Robinson: At the moment, I do not see the [fol. 783] relevancy of that question, in so far as his present question is concerned, anyway, so go ahead.

A. The company that I am employed with now, and its predecessor company by whom I was employed, or who employed me, have maintained this regular schedule since 1931, with the utmost stability as to sailings; and it is a fact that many of the Conference lines, several of them, have come into this trade since we entered the trade.

By Mr. McDowell:

Q. Your company provides, and has for some time provided, two regular sailings a month in these trades?

A. A minimum of two sailings a month, with, at times, additional sailings.

Q. The Conference lines in these trades provide a substantially larger number, do they, of sailings than your line?

A. They do.

Q. I think your testimony earlier brought out that there was something like 490 sailings a year by the Conference? I don't believe that is the exact figure.

A. I was told that for 1947 the Conference lines provided 498 sailings.

Mr. Hupper: 498?

The Witness: Yes, sir.

A. (Continuing:) And for that same year, my company [fol. 784] provided 23 sailings.

By Mr. McDowell:

Q. The figure you gave for the Conference lines is a total of the sailings of the individual lines comprising the membership of the Conference; is that right?

A. Yes. I cannot testify of my own knowledge that the Conference group provided 498 sailings; I was told that.

Q. You can say of your own knowledge, however, that the Conference lines as a group provide several times as many sailings as your line?

A. That is true.

Q. Is it a fact that many shippers have more frequent service in the trade than your line is able to provide?

A. Definitely so.

Q. With respect to those shippers that do require, then, more sailings and more frequent sailings than your line provides, is it true that such shippers must accept Conference freight agreement offered by the Conference Lines, binding such shippers to confine their shipments exclusively to Conference lines, or, in the alternative, pay higher rates on such shipments as they may have to ship by Conference lines?

A. That is the element of force that I have referred to quite often at this hearing, whereby, in these trades where the Conferences attempt to use this exclusive patronage rate [fol. 785] system, such shippers as require more service than my company provides consider they do not have any choice, they are forced to sign these exclusive patronage contracts; and obviously, they could not afford to ship with these Conference lines and pay the non-contract rates. I don't think anybody ever pays the non-contract rates.

Q. With respect to those shippers who require more sailings than your line provides, and who must pay the higher non-contract rates for such shipments as they make by Conference lines in the event that they do not agree to ship entirely by Conference lines, you consider that, that is, the imposition of that higher non-contract rate upon such shippers by the Conference lines as constituting a retaliation against such shippers for failing to agree to ship entirely by Conference lines?

A. To charge a man 30 per cent high rate, or 20 and 25 per cent higher rate, because he wouldn't confine his shipments to this Conference group seems very clearly to be a retaliation.

Q. And the only reason for this retaliation, and the only basis for it, is the refusal of a shipper to agree to patronize the Conference lines exclusively?

A. That is correct.

Q. You spoke a moment ago of the element of force. Would you say that this system imposes what might be [fol. 786] called a form of economic coercion upon such a shipper?

A. We have claimed that very consistently in past years, that it is coercion, pure and simple. We have used that exact word and term.

Q. Can you say whether or not it is a fact that with respect to many shippers, the difference between the contract rate which they might employ and the non-contract rate which they must pay if they refuse to sign the Conference rate agreement, is sufficient to affect or diminish or to make it difficult for them to secure particular business?

A. I don't think there is any doubt about it. There are some goods, particularly trade-marked goods and specialties, where perhaps the difference in rate would not prohibit sales being made; but there is an amount—there is a vast amount of cargo shipped, that is, there is a vast amount of material sold abroad from this country where the competition as to the sale of the goods, both with competitors here and in other countries is such that to predicate their prices to the foreign buyer on the so-called non-contract rates would automatically mean they could not do business.

Q. Would such a shipper be at a competitive disadvantage in relation to other shippers who had agreed to ship entirely by the Conference lines, and were therefore securing a lower rate from the Conference than the shipper who had not agreed?

A. I think very obviously they would, if one shipper would [fol. 787] be able to use a given rate and another shipper was required to pay a rate 20 to 30 per cent higher.

Q. Have you been advised by shippers that notwithstanding their desire to be free to choose such a method of shipment as they might from time to time wish, they feel compelled by the factors which we have just been describing here as economic coercion, to agree to ship entirely by the Conference lines?

Mr. Hupper: Can you relate that to dates and the persons involved?

Mr. McDowell: I shall do so, yes.

A. Yes; many, many, many, many, many times.

By Mr. McDowell:

Q. You attached to your affidavit in the Court action which preceded these proceedings, did you not, some copies of letters which you had received from shippers, stating that position?

A. Yes, sir.

Mr. Hupper: Is that the firecracker letter you are referring to?

Mr. O'Connor: Oh, now.

Mr. McDowell: I have in my hand a letter from the Hail & Cotton Company, Inc., leaf tobacco dealers of Louisville, Kentucky, to Isbrandtsen Company, dated October 25, 1948. I would like to have it marked for identification.

[fol. 788] Examiner Robinson: It will be No. 6 for identification.

(Letter above referred to was marked Exhibit No. 6 for identification.)

By Mr. McDowell:

Q. Will you examine that copy of a letter which has been marked for identification as Exhibit 6 and state whether or not you recognize it as a copy of a letter received by you?

A. Very definitely so, yes.

Q. I call your attention to the third paragraph of that letter, which states:

> "Although we are absolutely against anything that might work against freedom of action, which signing a Conference contract entails, still we do not know how we can afford not to do this as in our shipments we do have need to use said Conference lines to insure the regular sailings that we must have in order to comply with our customers' instructions as to their shipments."

I ask you whether that paragraph is characteristic of the attitude expressed to you by many shippers?

A. It very definitely is. That is one of the chief reasons.

Mr. Hupper: You are going to put in other letters, are you, instead of talking about characteristics?

Mr. O'Connor: I object to the interruption, Mr. Examiner.

[fol. 789] Examiner Robinson: Yes, I think we had better wait and see.

Mr. Hupper: He was asking about characteristics of something. I don't know what characteristics he means.

The Witness: Well, this is characteristic of the attitude of the shippers, and primarily that is the reason we are bringing this action.

Mr. Hupper: What do you mean by "the shippers"?

Mr. O'Connor: Well, now, wait a minute——

Examiner Robinson: We can develop that later.

(Discussion off the record.)

Mr. McDowell: I offer this document as Exhibit 6.

Examiner Robinson: Any objection?

Mr. Hupper: If he says that is a letter he has got, I have no objection on the grounds that it is a copy. My only objection is that it has no place in this case.

Examiner Robinson: It can be marked as Exhibit 6.

(Document referred to, previously marked Exhibit 6 for identification, was received in evidence.)

By Mr. McDowell:

Q. I hand you a letter, a copy of a letter from the Boler Petroleum Company, Philadelphia, Pennsylvania, to the Isbrandtsen Company, dated October 27, 1948, and I ask you whether you can identify this as a copy of a letter re-
[fol. 790] ceived by you?

A. (inspecting document).

Mr. McDowell: I ask that this letter be marked for identification as Exhibit 7.

Examiner Robinson: Exhibit 7 for identification.

(Letter referred to was marked Exhibit No. 7 for identification.)

A. Yes, that is a letter we received.

Mr. McDowell: I offer this letter in evidence as Exhibit 7.

Examiner Robinson: Are there any objections?

Mr. Hupper: I have no objection on the grounds that it

is a copy. My only objection is that it has no place in this case.

Examiner Robinson: It will be marked as Exhibit 7.

(Letter referred to, previously marked for identification Exhibit 7, was received in evidence.)

By Mr. McDowell:

Q. I hand you copy of a letter from Louis Marx & Company, of New York, New York, to the Isbrandtsen Company, dated October 28, 1948, and I ask you whether you can identify this as a copy of a letter received by you?

Mr. McDowell: I ask that the letter be marked for identification as Exhibit 8.

Examiner Robinson: It will be marked Exhibit 8.

[fol. 791] (Letter referred to was marked Exhibit No. 8 for identification.)

A. It is a copy of a letter received by us, by my company.

By Mr. McDowell:

Q. I call your attention to the third paragraph of this letter, and more particularly to the second sentence of that paragraph:

> "As the boats of the Conference Members comprise nearly all of the boats running, we do not see very much chance of avoiding the signing of the Conference contract, if we do not want to pay a higher freight rate, which we certainly do not want to do, or to have serious delays in our shipments."

I ask you whether the views expressed in that sentence which I have read you are typical of views which have been expressed to you verbally as well as in writing by other shippers?

A. That is true.

Mr. Hupper: Can you identify the shippers and times?

Examiner Robinson: I think we had better postpone that until a later moment when you cross-examine him on it.

Do you want to offer that in evidence?

Mr. McDowell: I offer that letter as Exhibit 8.

[fol. 792] Examiner Robinson: Is there any objection?

Mr. Hupper: I object only on the ground that it has no place in the case, not on the ground that it is a copy.

Examiner Robinson: It will be marked as Exhibit 8, and received.

(Letter referred to, previously marked Exhibit No. 8 for identification, was received in evidence.)

By Mr. McDowell:

Q. Is the effect of the Conference contract rate system which we have been discussing, and particularly the manner in which the shippers are compelled, or feel compelled under such system to confine their patronage to Conference lines to the exclusion of your line—is the effect of that system to narrow the market in which you may sell your services?

A. Very, very materially, it would narrow the fields in which we might expect to get business.

Q. To that extent, it tends to eliminate *u*ou from competing for the traffic of the shippers who are obligated under the Conference contract to limit their shipments to the Conference lines?

A. Very definitely so.

Q. Would you say, Mr. Crinkley, that the Conference contract rate system induces and compels shippers, as a practical matter, to boycott your company?

[fol. 793] Mr. Hupper: I object to that question. What does "boycott" mean? Does it mean he does not get business he would like to have because of competition; is that boycott?

Examiner Robinson: Would you like to elaborate on that? I think I know what you mean, but would you like to elaborate on it?

By Mr. McDowell:

Q. Well, you have testified that many shippers are compelled to agree to confine their traffic to the Conference lines exclusively, is that correct?

A. That is true.

Q. And that compulsion flows from the economic coercion implicit in the situation in which a shipper who needs more service than you can provide finds that unless he agrees to ship exclusively by Conference lines, he must pay a higher rate for those shipments which he does send by the Conference lines; is that correct?

A. That is also true.

[fol. 794] Q. Is not the effect of such an arrangement to require shippers to agree not to patronize your line?

A. That is the effect of that system.

Q. Do you consider that the inducement and compulsion of such shippers to boycott your line——

Mr. Hupper: I object to a characterization of "boycott." Everybody knows what the definition of boycott is. It is not part of this case. It is a determination on the part of shippers, to boycott the Isbrandtsen Company.

Examiner Robinson: When I spoke of your elaborating a minute ago, I did not mean that you should ask your questions more fully, but that if you would like to, you should explain what you mean by the use of the word "boycott."

Mr. McDowell: By boycott I mean the exact arrangement that has been recognized by the courts in numerous cases where people engaged in a particular line of trade are compelled, either by economic coercion or by force of duress, or what have you, to agree to confine their patronage exclusively to one group or company with whom others would like to compete; and we have that situation exemplified, of course, in the Eastern States Lumber Association case, in which dealers were compelled to agree to buy all their supplies of millwork or lumber from a particular combination of mills, or pay more money for such lumber as [fol. 795] they must buy from the mills.

Mr. Hupper: You are talking about something quite different from anything in this case. You are trying to deal this case into something that it is not, that is all.

Mr. McDowell: I think the term has a well understood meaning.

Examiner Robinson: With your explanation of it, I think we will let the record stand as it is.

Mr. McDowell: I do not believe we got an answer to the question.

A. My opinion is that if this freight group of shippers there are forced into a position where they have to tell you, "I can't do any business with you," that they are being forced to exercise a boycott against my firm.

Mr. Hupper: I move to strike out the characterization of boycott as not relating to anything in the case.

Examiner Robinson: Overruled.

By Mr. McDowell:

Q. You understand, of course, that a boycott does not imply any question as to the desire or the attitude of the shippers with respect to whether or not they would like to deal with your company; it is a question of their ability to do so?

A. I understand that.

Q. Under the circumstances?

A. I understand that.

[fol. 796] Q. I want to come around to a matter now which Mr. Hupper has questioned you, and that is this matter of stability and regulatory of service.

Mr. Hupper: Pardon me for just asking at this moment——

Mr. McDowell: Certainly.

Mr. Hupper: You said a few moments ago, in response to a question I put, concerning range of ports, you intended to take it up. Do you intend to do that now in addition to frequency of service?

Mr. McDowell: Of range of ports?

Mr. Hupper: Range of ports covered.

Mr. McDowell: I don't recall that.

Mr. Hupper: I am not suggesting you have to do so, but I put a question to you.

Mr. McDowell: I don't recall, Mr. Hupper, that I made any such statement. I think I will leave that matter to you to develop.

Mr. Hupper: What I did, I asked you a question like that, how much frequency of service, and range of ports, and you said you were coming to those items.

Mr. McDowell: I took up the matter of frequency of service, and that is what I understood you to be discussing, Mr. Hupper?

Mr. Hupper: Well, I mentioned also range of ports [fol. 797] covered.

Mr. McDowell: I think I will leave that to you to develop.

Mr. Hupper: All right.

By Mr. McDowell:

Q. But speaking now with respect to stability and regularity of service, under the conference contract rate system, is the shipper offered a greater stability and regularity of service than he is offered by the conference lines without the contract rate sytem?

A. No, sir, so far as the New York Journal of Commerce would show, the advertised sailings of the conference lines after November 1st was to be the same as they were prior to that time; there was no added stability to be brought into the trade, so far as sailings were concerned, with the advent of this conference contract system.

Q. Do you consider the conference contract system essential to the maintenance and stability of service?

A. It very definitely is not. We have been operating, all of us, the conference lines and ourselves, since the war in this trade, without any contract. I think the sailings of the whole group of lines involved in that trade have been as stable as could be desired by shippers generally.

Q. Under the freight agreement offered the shippers by the conference lines in connection with the exclusive con- [fol. 798] tract rate system, is any mention or commitment made by the conference lines with respect to greater stability or regularity, or any stability or regularity of service?

A. The form of the conference contracts which were proposed to be used are part of the evidence in this case; but there is not promised any additional stability of service, because shippers signed agreements or contracts.

Examiner Robinson: Do you mean it does not appear from the contract itself, or that there is no understanding to that effect?

The Witness: There is none there.

Examiner Robinson: In the agreement itself?

The Witness: In the agreement itself?

Mr. Hupper: There is something in the conference agreement about stability of service, isn't there?

The Witness: Well, the shipper does not necessarily see that.

Mr. Hupper: Well it is in there, isn't it, do you know?

The Witness: The shippers don't know. I know.

Mr. Hupper: You know?

The Witness: I know it, but I am not a shipper, you see.

Mr. McDowell: What is that you are saying, Mr. Hupper; [fol. 799] that it is in the conference agreement?

Mr. Hupper: Yes, it talks about stability of service and so forth, a general expression.

By Mr. McDowell:

Q. That is a feature of the conference agreement of the type which I understand you do not oppose?

A. I understand that the conference agreements, I am not positive that I understand it, but they set forth as one reason for using a contract/non-contract rate system is for greater stability. Of course, I have always considered that so much talk; it doesn't mean anything.

Q. What I am getting at is that the undertaking of the conference lines to provide such stability and regularity of service as they do provide is contained in the conference agreement quite apart from the contract offered shippers?

A. The contract offered shippers does not provide for any stated stability of service.

Q. And their undertaking by the conference lines in the conference agreements was present and was a part of the conference agreement long prior to the time when the conferences involved here undertook last fall to extend this system to virtually all of the traffic covered here?

A. I have read this conference agreement. I don't recall having read anything about any assurance of stability of service or any agreement between the lines calling for cer- [fol. 800] tain specified sailings or things of that kind.

Q. I am talking now about the conference agreement as distinguished from——

A. I am talking about that also.

Mr. McDowell: I am informed by Mr. Hupper that there is a provision in the conference agreement.

The Witness: There is a mention of it in there, but there is no understanding that there will be a maximum or minimum of sailings, or anything of that nature.

[fol. 801] Mr. McDowell: But there is an undertaking that the Conference lines will provide such stability or regularity as they may—something of that sort?

The Witness: No, sir.

Mr. O'Connor: There is a lot of guff about it, isn't there?

The Witness: In my opinion, I think so.

Mr. McDowell: Were you referring, Mr. Hupper, may I ask, to the second paragraph in the third numbered section of the North Atlantic Continental Freight Conference Agreement?

Mr. Hupper: What I was referring to was the whole thing; but that provision is apposite to my remark.

(Reading.) "In an effort to stabilize rates and permit a forward trading to the common good of the members and exporters," and so forth.

Mr. O'Connor: Where does that affect regularity of sailings? Is there any commitment in there for regularity of sailings?

Mr. Hupper: It is perfectly well known that these Conference lines have about 500 sailings a year. That is what you might call a very stable stability of service.

Mr. O'Connor: But there are 12 of them in the trade.

[fol. 802] By Mr. McDowell:

Q. There is no actual commitment in the Conference agreement, as you understand it, to provide any specified number of sailings, or specified regularity of service?

A. There is no commitment in the contract agreement, nor in the contracts offered to the shippers, that makes any commitment on the part of the Conference or any one of the Conference lines to provide any stated amount of sailings, maximum or minimum.

Q. Would you say, Mr. Crinkley, that the expectation which the shipper has of stability and regularity of service from the Conference lines is just as in your own case, based upon the experience demonstrated by the operation of these lines over a period of time, of regularity and stability

of service, from which the shipper may conclude, of course, that they will offer the same stability and regularity which you have offered?

A. That is the only basis on which a shipper can judge whether he can count on the stability of sailings of either the Conference lines or of my company.

Mr. McDowell: That is all I have, Mr. Examiner.

Examiner Robinson: Mr. Cockrum?

Mr. Cockrum: One or two questions, Mr. Crinkley.

By Mr. Cockrum:

Q. The exports from this country to the ports in Belgium, [fol. 803] Holland, and Germany are destined to countries other than those three port countries, are they?

A. Yes, sir. The ports of Antwerp, Rotterdam, Bremen, and Hamburg are ports of entry not only for the countries of Belgium, Holland, and Germany, but also for such countries as Switzerland and some of the interior countries in Europe, such as Austria, Czechoslovakia, and so forth.

Q. I presume that between the ports involved in this proceeding there are a great number and variety of agricultural commodities moving?

A. Yes, sir. To these ports there is a very substantial movement of agricultural products: foodstuffs of many, many kinds, packing house products, flour, cereals, cattle and poultry feed, numberous others; and candy, vegetables, meats, fruits; and of course other items, such as leaf tobacco which I have mentioned several times. There is a very substantial volume of agricultural products constantly, year after year, moving in this particular trade.

Q. And those commodities constitute, I presume, a substantial portion of the total freight moving between the ports involved?

A. I would say a quite substantial proportion. I don't believe I can estimate accurately, but I certainly would agree to a very substantial portion of the cargo movement through those ports.

[fol. 804] Mr. Cockrum: I believe the rest of what I had in mind has already been answered, Mr. Examiner.

Examiner Robinson: Are there any further questions?

Mr. Galland: I have some cross-examination. I would be perfectly glad to put it off until after the noon recess, however.

Examiner Robinson: Off the record.

(Discussion off the record.)

Examiner Robinson: On the record.

Mr. Crinkley, I noticed in Exhibit 3, which is the rates of the North Atlantic Continental Freight Conference, you have nine exceptions referred to, and the first one is ad valorem rates.

As I understand tariffs—and correct me if I am wrong—that would include a multitude of commodities, isn't that right?

The Witness: It possibly could, but it hardly would. Ad valorem rates are only applied on cargo items of considerable value, such as jewelry, gold coin, or silver coin, or extremely valuable items: paintings, works of art, and so forth. There would be a rather limited number of items that would move under that because it would only constitute things of rather considerable value.

Examiner Robinson: All I want to do is to get in the [fol. 805] record it could be more than one commodity. That is what I wanted to find out.

The Witness: Yes, sir.

Examiner Robinson: We will adjourn until two o'clock.

(Whereupon, a recess was taken at 12:20, until 2:00 p. m.)

[fol. 806] Afternoon Session

2:00 P. M.

Examiner Robinson: Mr. Galland, is it your turn now?
Mr. Galland: I don't know. I am ready.
Examiner Robinson: You were finished, Mr. McDowell?
Mr. McDowell: Yes, I had finished.

MATTHEW S. CRINKLEY, resumed the stand.

Cross-examination (Continued).

By Mr. Galland:

Q. Mr. Crinkley, you testified as to the number of vessels that Isbrandtsen is operating in the North Atlantic trade?

A. Yes.

Q. How many did you say there were?

A. I said for the year 1947 my company had 23 sailings.

Q. How many vessels were involved?

A. I don't believe I can answer that. I should say four ships were maintained, twice monthly sailings. But some of the vessels that we used in that trade were American ships that were chartered from private owners, so I can't give you the exact number of vessels that participated in that trade.

Q. In this case, I understand that all your ships are under United States registry.

A. That is right. In 1948 my company had 36 sailings in [fol. 807] this trade, all American ships. Some of those additional sailings were used largely for Army cargo.

Q. Now, as to your 23, or 24, was it, in 1947?

A. In 1947 it was 23 sailings.

Q. 23 sailings. Does that include full cargo shipments, or did that consist merely of 23 common carrier sailings?

A. 23 common carrier sailings.

Q. And they carried mainly what we refered to here as package shipments, is that right?

A. General cargo, yes.

Q. General cargo. And in 1947 did you have any sailings in this trade of full cargoes which were in addition to the 23 included in your common carrier service?

A. Yes, but I can't tell you how many. I don't personally handle that. We transported quite a number of full cargo.

Q. But you don't include those figures in those that you give to describe your regular service, is that right?

A. That is true.

Q. What are the trades in which Isbrandtsen Company now maintain common carrier service?

A. Besides this particular trade, we maintain common carrier service to some ports in the Eastern Mediterranean, to India, the Straits——

Q. Go ahead.

A. Eastern Mediterranean, Red Sea and India, the [fol. 808] Straits, East Indies, Far East, and the north coast of South America.

Examiner Robinson: It would be easier to refer to this common carrier service as a liner service, so everybody will get the same term. Is that all right?

The Witness: Berth service.

Examiner Robinson: Okay. I am trying to get a——

The Witness: I understand the usual term is berth service.

By Mr. Galland:

Q. What was the last one you named, the north coast of South America?

A. Venezuela. I will confine it to that.

Q. Those are all berth services?

A. Yes.

Q. What range of United States ports do those services serve?

A. Pardon me. I failed to note one berth service we operate from United States gulf ports to this same range of continental European ports, Antwerp, Rotterdam, Hamburg, and Bremen.

Q. And the other services that you mentioned, do they offer out of the Gulf or out of the West Coast——

A. No, all of these berth services except this last one I named of the United States gulf to the continent, load at Norfolk, Newport News, Baltimore, Philadelphia, and New York.

[fol. 809] Q. Do you have any Pacific Coast service?

A. None at all. No berth service from the Pacific to the Far East. We do operate some on berth from the Far East to the Pacific Coast enroute to the North Atlantic U. S. A. ports.

Q. Why is it, Mr. Crinkley, that you have abandoned the use of the type of contract with shippers that was described in your testimony yesterday?

A. Well, let's discuss now the trans-Atlantic service that we are dealing with. I mentioned, I believe, that the use of these contracts, and which I want to repeat have no resemblance to the conference exclusive patronage contract, were used mainly for one particular purpose, and that was when my company had established or adjusted a special freight rate for the purpose of assisting export business to be done, let us say, after we began to move that cargo, and particularly if it was in fair volume, the conference lines were prone to meet those rates and sometimes quote lower rates even, to which we had no objection. That is competition. But in doing that, to pin it up to this conference contract rate system solely after we had provided a rate that would produce business, certainly we are forced entirely out of it, frozen out of it. And accordingly, to meet that, as a defense mechanism, we used this simple [fol. 810] contract that I described heretofore. Now, since the war, except for those five items that were mentioned, the conference has not used the contract rate system. So from that standpoint it hasn't been necessary. And furthermore, we don't particularly care about it anyway. I don't care for it myself. It is just useless. I think the conference would be better off if they finished using the system themselves. We just don't care to carry them forward, and we have not done so.

Q. Did you feel while you were using this contract form you have described that it was illegal?

A. No, sir.

Q. Do you feel now that it might have been?

A. No, sir. I do not. They were actual contracts with carriers, and they had none of the features about them that we believe make these other contracts illegal. There were no reprisals, no penalties, no liquidated damages. Simply

a confirmation, really, of the establishment of the rate and of the purpose of the shipper to patronize us on that basis.

Q. Were you present in the room when I asked Mr.——

A. Incidentally, will you please let me go on a little forward on that?

Q. Go ahead.

A. At one period of time there the question was brought up in a rather joking way by Mr. McArt, of the Maritime Commission, now chairman of the conference on the West [fol. 811] Coast, and he agreed with me that those contracts could not be considered as illegal whatsoever. They were filed with the Commission along with our tariffs.

Q. Do you know whether Mr. McArt now associated with the Pacific Coast European conference, employed the exclusive patronage contracts?

A. I understand they are using that system.

Q. I think you described your contract yesterday as being a much shorter, simpler form than the conference contract?

A. Yes.

Q. And as you characterized it it was free of any specific provisions providing for penalties or reprisals?

A. That is true.

Q. Were you present when I asked Mr. Isbrandtsen whether that contract form was adopted with the view toward enforcing the contract against a shipper who might fail to observe its terms?

A. Now, your question was, was I present when you asked Mr. Isbrandtsen that question?

Q. Yes.

A. Yes, I was present.

Q. Did you hear his answer?

A. I don't recall his answer, but I can answer it.

Q. Then I will ask you what your answer would be to that question?

[fol. 812] A. The contract was not devised with the sense of providing grounds for legal action in the event the shipper did not ship with us.

Q. Did you regard it as a valid, binding contract?

A. I can't say that we ever really considered it as an actual contract. We considered it more of a confirmation of an understanding with the shipper that if we adjusted a

rate or established a rate, that he was in good faith with us and proposed to ship with us.

Q. Did you assume when you offered that contract to the shippers, that the shippers would comply with its terms?

A. I should say within reason, yes. Most of them provided that if they had shipments that couldn't be sent with us—or we had an understanding they could be sent with other people without any threats on our part.

Q. Did any of the shippers ever violate ——

A. I wouldn't say under these circumstances they violated, for there was no violation if they shipped with someone else.

Q. Just a minute. As I understand the contracts, they provided that during the effective period of the contract the respective shippers would give their entire patronage to your line. Is that right?

A. No. It was provided right along with the understanding that if they had shipments that couldn't be held for our [fol. 813] sailings, they would be free to ship with other lines.

Q. But if they did have shipments that could be held for your sailings?

A. There was no understanding about that whatsoever. Nothing was brought of it by the shippers or ourselves. We did not say to the shipper, "If you make this agreement with us and then ship with some other line, we are going to carry you to court." There was no implication, and it was never thought about by us or the shipper. There can't anything else be made out of it except what I have said.

Q. Have you located a copy of the contract?

A. I have asked them to search around and they have found a couple forms.

Q. Would you make one of those available for the record?

A. Mr. O'Connor has one, I believe.

Mr. Galland: Mr. O'Connor, may we have a copy of that contract?

(Mr. O'Connor gave the document to Mr. Galland.)

The Witness: My recollection is at the time that very frequently the whole understanding was in the shape of a letter, simply confirming that this rate be held between

this period and that period, and it was the sense that the shipper would, as far as possible, ship with us.

Mr. Galland: May I have a moment to look this over?

[fol. 814] Examiner Robinson: Sure.

Off the record.

(Discussion off the record.)

Mr. Galland: Are there enough copies of this available for distribution? I would like to have it marked for identification and offered in evidence. If not, I can have it copied.

Mr. O'Connor: No, I think I have enough copies.

By Mr. Galland:

Q. Do you have one before you, Mr. Crinkley?

A. Yes.

Q. Mr. Crinkley, I now understand you have before you a photostatic copy of the document, which on the first line says, "Isbrandtsen-Moller Line"; on the second line appears the word "agreement." It appears to be a copy of an agreement between Messrs. Stofzuiger Centrale P. Elzerman and Isbrandtsen-Moller Company, Incorporated, and on the lower right-hand corner are the figures 16. Do you have a copy of that document before you?

A. Yes.

Mr. Galland: I will ask that it be marked for identification, please, the exhibit next in order.

Examiner Robinson: It will be No. 9 for identification.

[fol. 815] (Photostatic copy of agreement above referred to was marked Exhibit No. 9 for identification.)

By Mr. Galland:

Q. Was this same form of agreement entered into between Isbrandtsen-Moller, Company, Incorporated and shippers other than the shippers mentioned in the copy?

A. The general form is the same. We didn't have a formal setup as to the form of paper to be used. As I said before, you will see here that this is more or less in the way of a confirmation, or simply an agreement about it,

and very frequently it was simply a letter exchanged between the parties.

Q. But this was approximately the form that was standardized for this purpose?

A. That is one of the forms that was used, and that is the one our people were able to find in scraping around through the old files.

Q. Now, I note from the language of this agreement, that the shipper with whom it was entered into agreed to ship vacuum cleaners and washing machines from New York and Philadelphia to Rotterdam by vessels running in the line of Messrs. Isbrandtsen-Moller Company, Incorporated during the year 1937. As far as you know, Mr. Crinkley, was this shipper a shipper of any other product than vacuum [fol. 816] cleaners and washing machines?

A. Yes, he shipped many things.

Q. Did you have agreements with him covering his shipments of any other product?

A. No. I also call your attention to the fact that while this agreement—I am just reading it myself—states that it covers shipments during the year 1937, it was closed on November 17—1936—oh, that is right—1936. The figure wasn't very plain.

Mr. Hupper: 1936?

The Witness: That is right.

Mr. Galland: November 17th is the date at the bottom of the agreement.

Mr. Hupper: Yes.

The Witness: We had no thought at any time that if a shipper was dealing with us on one commodity that it was necessary for him to commit himself with us on any other commodity he might ship.

[fol. 817] By Mr. Galland:

Q. Do you happen to remember whether these products constituted the bulk of the export shipments of this shipper during the period in question?

A. I am very sorry to say I don't remember.

Q. Now, I note in the paragraph after the list of products

and the rates applying to those products, the provision that:

> "In case other lines between New York and Philadelphia to Rotterdam reduce their freight rates on the within-mentioned commodities below the freight rates herein agreed, Messrs. Isbrandtsen-Moller Company, Inc. will either meet or release Messrs. Stofzuiger Centrale P. Elzerman from this contract."

Were you called upon to meet either of the alternatives provided in that paragraph?

A. I don't think so, but I can't say definitely. I can only say we had a general understanding with any shipper that we did not want to handicap him in carrying on his business, and if other lines reduced the rate below the level, we either would meet it or turn him loose immediately. We wouldn't try to confine him or restrict him. We wanted to leave him just as free as we could. It was simply a good faith understanding that if we extended the rate we could [fol. 818] reasonably count on the business.

Q. Now, I understood you to say a few moments ago that you recall no case where a shipper who became the subject of one of these contracts who had ever violated it, is that right?

A. Yes, that is right.

Q. I think I also understood you to say that you did not contemplate taking any shipper into Court to enforce an agreement of this type, or to collect damages for its breach, is that correct?

A. That is correct. I don't contemplate or relish the thought of taking the shipper or the customer into Court.

Q. If I remember correctly, Mr. O'Connor asked you this morning whether you knew of any instance in which a Conference had ever sued to enforce the penalties provided in the Conference exclusive patronage contract, and you said you know of no such case, is that correct?

A. I know of no such case.

Examiner Robinson: My recollection is that this morning when you were speaking of the booking arrangements you had with CARE, you would not release them. Would it

be fair to say you would not have done anything in that case either?

The Witness: Mr. Robinson, that was a specific booking contract, not some general rate contract. We had made a [fol. 819] booking reservation. We had scheduled a vessel for that port based on that booking, and based on that factor we had taken other smaller amounts of cargo for which we were committed.

Under those circumstances, that was a totally different thing. It has nothing to do with the type of contract either that we are complaining of as to the Conference, or this simple little thing here that is now under consideration.

Mr. Hupper: Exhibit 9, you mean?

The Witness: Yes. Any shipping man in the room knows what I am talking about.

By Mr. Galland:

Q. Can you tell me, Mr. Crinkley, how many agreements in this form Isbrandtsen-Moller Company entered into with shippers?

A. I would say—as concerning this trade?

Q. Yes.

A. Possibly 25 or 30.

Q. Were similar agreements used in similar trades?

A. Yes.

Q. In what other trades?

A. In the Far East trade.

Q. Can you tell us how many agreements of that type were in effect in that trade?

A. I would say 100, maybe, 125 possibly.

[fol. 820] Q. And those were contracts of the Isbrandtsen-Moller Company, is that correct?

A. That is right.

Q. Has the Isbrandtsen Company employed this type of agreement?

A. No.

Q. Has it employed any other form of agreement seeking to accomplish the same result?

A. We have no type of contract other than simple booking engagements like we use.

Q. I know you haven't now, but has the Isbrandtsen Company itself ever had?

A. No.

Mr. Galland: Now, Mr. Examiner, I offer in evidence the document marked for identification Exhibit 9.

Examiner Robinson: Is there any objection?

Mr. Hupper: Not the slightest.

Examiner Robinson: Mr. O'Connor?

Mr. O'Connor: No.

Examiner Robinson: It will be marked and received as Exhibit No. 9.

(Document referred to, previously marked Exhibit No. 9 for identification, was received in evidence.)

By Mr. Galland:

Q. At the beginning of Mr. Hupper's questioning yester- [fol. 821] day, Mr. Crinkley, I think you said that you had devoted some study to the investigation and the report of the Alexander Committee relative to the Conference System.

A. I have, yes. I said I hadn't read the entire proceedings but I read the summary.

Q. You read the report?

A. I had dipped into some of the other volumes.

Q. Were you in general agreement with the conclusions and recommendations of the Alexander Committee?

A. Personally, I am not altogether in agreement with those conclusions.

Q. Now, let me ask you whether you are in general agreement with this language in the report——

A. What is that? Is that a part of the Alexander Report?

Q. It is an excerpt from the Alexander Report.

Mr. McGovern: What page?

Mr. Galland: I haven't the original report here. I will be glad to supply it.

Mr. O'Connor: We have always had difficulty in finding excerpts from the Alexander Report. Some of them we have never been able to locate in those volumes. So, really, without the page reference, it leaves us sort of——

Examiner Robinson: Let's let him read it subject to the fact that it will be identified at some place, and if it is not identified, it will not be considered.

[fol. 822] Off the record.

(Discussion off the record.)

Mr. O'Connor: Mr. Examiner, of course I also suggest that the opinion of this lay witness as to the soundness or the adequacy, or whatnot, of the law which was passed as a result of this report, is not very fruitful or helpful to us. We know no Court will be bound by it, and even we as counsel are not bound by the opinion of the witness on such a matter.

Examiner Robinson: On the other hand, he is very definite in his ideas as to what other sections of the Shipping Act mean, so I don't see why we differentiate.

Mr. O'Connor: If you are going to sit here and ask him his opinion, and permit his interpretation of each section of the Shipping Act, I suggest you call in a lawyer. There must be a lawyer available somewhere.

Mr. Galland: I heard no objection when the witness was asked questions of opinion as to what constitutes a retaliation.

Examiner Robinson: I think in view of what has gone in, this is no worse than the rest of it.

Mr. McDowell: I think this is quite a different matter. I think retaliation is a factual matter as to which this witness can have an opinion, and that is an issue here.

I don't have any objection, but I don't see the relevance [fol. 823] or the pertinence of the opinions of this witness concerning the soundness of a report of Congress.

Examiner Robinson: He expressed very vehemently and definitely his observations as to other sections of the Shipping Act which were a direct result of the Alexander investigation, and I don't see any harm in getting his opinion as to this.

Mr. McDowell: I am not objecting. I want to make sure we make a distinction as to whether an opinion constitutes a particular factual quality, such as retaliation.

Examiner Robinson: We all realize that what he thinks about it, in the final answer, doesn't make any difference to anybody. But I think he should be allowed to answer it.

Mr. Hupper: I think I noted that Mr. McDowell was fairly apt in putting a proposition of law to Mr. Crinkley and getting ready assent thereto.

Examiner Robinson: I think it is no worse than other questions that have been asked, as I said a while ago.

Mr. O'Connor: There must be somewhere in this wide, wide world a limit that you can go from bad to worse. There must be a point where words become——

Examiner Robinson: We will try to draw the line somewhere, but so far I don't think we have to tie it. Not yet.

[fol. 824] Mr. Hupper: But no limit is visible yet.

By Mr. Galland:

Q. Now, the Committee report said——

Examiner Robinson: In case there is objection, I don't know whether there is, but let's let him go ahead and read that, subject to tying it up and showing that it actually is a correct excerpt. We will save that much time.

If it isn't, we will throw it out.

Mr. O'Connor: The only thing is to get the page reference. We don't question the accuracy of the statement.

Mr. Galland: I know of my own knowledge, from having read the original report, that it is not a fabrication.

Mr. O'Connor: We don't question that, but we would like to be able to find it, so that we can read the sentence before and behind it.

Examiner Robinson: We understand each other. Go ahead.

Mr. Hupper: Might it not be a good idea, Mr. Examiner, to understand here generally that the whole Alexander Committee hearings and report are available for reference by anybody in this proceeding?

The Witness: Where is it available? I would like to ask.

Examiner Robinson: The Library of Congress. I will be glad to let you have my copy.

[fol. 825] Mr. McGovern: Actually, they are very difficult to get hold of.

Examiner Robinson: I think it is something I can take judicial notice of anyway, as far as that is concerned.

Go ahead, Mr. Galland.

By Mr. Galland:

Q. This is the quotation:

> "The entire history of steamship agreements shows that in ocean commerce there is no happy medium between war peace and when several lines engage in the same trade. Most of the numerous agreements and Conference arrangements discussed in the foregoing report were the outcome of rate wars, and represented truces between the contending lines. To terminate the existing agreements would necessarily bring about one of two results: The lines would either engage in rate wars, which would mean the elimination of the weak and the survival of the strong, or, to avoid a costly struggle, they would consolidate through common ownership. Neither result can be prevented by legislation, and either would mean a monopoly fully as effective, and it is believed more so, than can exist by virtue of an agreement."

Now, I am skipping a passage and breaking into a sen- [fol. 826] tence.

A. May I give my opinion as to that last?

Q. I have just a half-sentence more, breaking into the middle of a sentence:

> ". . . to resort to open and cut-throat competition among the lines serving the United States would place American exporters at a disadvantage in many markets as compared with their foreign competitors."

Now, I will be glad to ask you whether you agree with what I have read as a whole?

A. May I have it?

Q. Yes. The parts I have read have been bracketed.

A. There are several different matters there involved.

In the first place, if I understood the reading of this, a reference was made to Conference agreements, as to what would happen if they were forbidden, for instance. There is nothing that you read there that I see has anything to do with an exclusive patronage Conference contract rate system. It simply says that if the agreements were cancelled that it might bring about a rate war.

Just a moment; let me look at this again. I think, if you don't mind, I will try to take this up piecemeal.

Q. That is fine.

A. The first sentence, "The entire history of steamship [fol. 827] agreements shows that in ocean commerce there is no happy medium between war and peace when several lines engage in the same trade."

That is not correct. Things have changed apparently since Mr. Alexander wrote this report. There have been occasions when there were more than one line in a trade, and where there was peace, and stable conditions.

Q. From your study of the record of the Alexander hearings, do you think that was a fair conclusion, based on the record made by the Alexander Committee?

A. I think it was possibly more than that—I don't like to condition the answer that way. The lines that were the subject of the investigation of that Committee were, as a rule, very large, powerful——

Mr. O'Connor: Ruthless.

A. (continuing) —ruthless lines there that were out to control and dominate monopolies, and that was the basis for the investigation. There would not have been an investigation if there had not been innumerable complaints by American importers and exporters who were being imposed upon by powerful steamship lines and groups, and accordingly, the investigation was for the purpose of ascertaining just what the circumstances were.

Now, just as a part of it, they say up to that time there [fol. 828] had been no happy medium. There was either war or peace. And in that connection I am here to say that that condition since that time has evidently changed, because there have been places where there are more than one line and where there hasn't been that extreme, either war or peace, and so forth, where there has been stability.

Now, I will go on and read the next:

"Most of the numerous agreements and Conference arrangements discussed in the foregoing report were the outcome of rate wars and represented truces between the contending lines."

I think you asked if, in my opinion, this is true. In other words, what they are saying there is that the Conference agreement usually means the end of a rate war.

I am here to say that based on conditions in some parts of the world today, that Conference agreements, and even the use of the exclusive patronage Conference contracts, mean terrific rate wars, to the extent that cargo is carried free. We have currently before us an example:

The Conference operating between India and Europe and the United Kingdom—all of them in a Conference, using the Conference contract system, no independents, nowhere on the scene—the utmost in stability, except all at once there is no stability, and there is a rate war such as you have never seen.

[fol. 829] I understand within the last 12 days there has been a settlement, but for 90 days the situation developed where the government of India was very much concerned that the vessels they had purchased to carry part of the Indian commerce were being put in circumstances there where they were not able to come anywhere near covering the costs.

As to stability, there was none.

Q. That was a Conference not subject to the provisions of the Shipping Act?

A. But it speaks of the history of Conference agreements, and doesn't differentiate in the part that you read to me.

Q. Was the Conference agreement still operative at the time that the rate war developed?

A. Yes.

Q. And it represented in substance a breakup of the Conference?

A. Here were lines all in a Conference, a very rigid one, and a very fine contract system, namely, the deferred rebate system—everything is stabilized.

Examiner Robinson: What do you mean by "very fine"? Do I take it that you agree with it?

The Witness: I am in accord with the Alexander Committee. They said it stinks, and made it a criminal offense in our lines.

By Mr. Galland:

[fol. 830] Q. The Conference which you have used as an example is not under the jurisdiction of the United States——

A. (Interrupting:) Nevertheless, it has a Conference agreement such as is set forth in this paragraph, and speaks of stability, and I am saying it is a perfect illustration of the folly of assuming that you can get some lines operated by human beings together in a Conference and think that everlastingly set everything up in a beautiful way as it should be, is a fallacy.

Q. I don't want my question to stand as testimony. I would like to ask you whether the Conference you have given as an example is a Conference subject to the Shipping Act?

A. I will say that Conference uses the same type of agreements and contracts for the same purposes as those subject to the Shipping Act.

Mr. McDowell: Neither were those Conferences there subject to the Shipping Act.

Mr. Galland: I am not asking that.

By Mr. Galland:

Q. I am asking whether the Conference you gave us as an example is a Conference subject to the Shipping Act?

A. Let me say that the Conference I gave as an example is exactly the same type of agreement that this report reports on.

Mr. Galland: Mr. Examiner, I ask for an answer to my [fol. 831] question.

Examiner Robinson: I know how you feel, but——

The Witness: It is not a fair question.

Examiner Robinson: Yes, if it is a question of fact. He wants to know whether the Conference you are talking about is subject to our laws?

A. No, and neither were these.

Now, to go down a little further: "To terminate the existing agreements would necessarily bring about one of two results: The lines would either engage in rate wars, which

would mean the elimination of the weak and the survival of the strong . . ."

Let me stop and say, of course, that is a matter of conclusion by the gentleman who wrote the report. It is not necessarily a fact. It is just a matter of opinion.

". . . or to avoid a costly struggle, they would consolidate through common ownership."

That is not a fact either. It is just a conclusion or opinion by those gentlemen. I don't think it is necessarily so.

By Mr. Galland:

Q. At the beginning of your testimony under examination by Mr. Hupper, you said that you had to some extent made a study of the Alexander investigation.

On the basis of that study, do you think that is a fair [fol. 832] conclusion and that the record before the Committee supports those statements?

A. No, I don't believe it does, in my own personal opinion.

Q. What do you recall in that investigation in the way of evidence that was inconsistent with that?

A. Well, they investigated conditions in the South American trade, and the whole French Line, and quite a few others, and traced the beginning of some of the methods used to more or less monopolizing that trade, and those arrangements were just coasting along—whether on ball bearings or not, I don't know—but coasting along, and I didn't see a combining of ownership, or all at once a certain situation where only one line was left in a trade. I am just giving you my answer to your question.

Q. Go ahead.

A. "Neither result can be prevented by legislation, and either would mean a monopoly fully as effective, and it is believed more so, than can exist by virtue of an agreement."

I think you will see here that the Alexander Committee was very violently opposed to anything that would allow a monopoly to be created. They didn't like that thought very much, of a monopoly. They say it would be a very bad thing. The inference is there. And they say any of those two results, if they took place, would be the same as if the [fol. 833] agreements were allowed to continue. "Than can exist by virtue of an agreement."

But I want to call your attention also to the fact here that this entire thing that you read to me, and that I am now reading, concerns itself with Conference agreements. The question was whether to allow these lines to form Conferences or not. The question was not whether to allow the lines to use the exclusive patronage contract system.

Q. I am only asking what it says.

A. This other part down here: "To restore open and cut-throat competition among the lines serving the United States would place American exporters at a disadvantage in many markets as compared with their foreign competitors."

If I understand it right, I am asked to express some opinion about that conclusion of the Alexander Committee.

Q. That is right.

A. I think very evidently the Committee abhorred any situation where they would have cut-throat competition, or unfair competition. I think it doesn't need very much common sense to understand that shippers' interests are very seriously affected by cut-throat competition. I understand the words "cut-throat competition" to mean "unfair competition." Our understanding——

Q. I would like to say unlimited competition without restriction.

[fol. 834] A. No, I wouldn't say that at all. There is a vast difference between unfair and unlimited. Cut-throat competition is unfair competition, and in domestic transportation I understand unfair competition to be transportation furnished at less than cost. Rates, for instance, that are quoted which will show the operator a profit cannot be classified as unfair or cut-throat competition.

My understanding is that one of the results of this investigation with that particular aspect in mind was that in the 1916 Shipping Act the Maritime Commission was given the duty and authority to deal with unfair competition. There have been occasions when the Commission on its own motion or that of its predecessor has called for investigations and hearings on alleged unfair trade practices, and power and authority is given to the Commission to deal with those by the execution or issuance of proper orders.

Those orders can be enforced against American Lines in our American ports. It stipulates that if foreign lines are involved, and don't obey, they can be kept out of our ports.

Then, so far as dealing with cut-throat competition, the Alexander Committee provided a remedy for that by giving the Maritime Commission and its predecessor the authority and duty to deal with it.

Q. Now, let me ask you whether you agree that cut-throat competition in the sense in which you understand it is [fol. 835] inimical to the interests of foreign trade?

A. I don't think that cut-throat competition is well for any segment of our foreign trade, either the Merchant Marine or exporters and importers. But I don't think anybody can possibly say that because there are two or more lines competing on a given trade that that necessarily means cut-throat competition. I think a statement of that would be foolishness.

Q. Are the cost levels under which United States flag companies operate approximately the same as, or are they different from the cost levels under which foreign flag carriers operate?

A. At the present time, the cost of labor on American ships is higher than the cost of labor on at least some foreign ships.

Q. How about the cost of construction?

A. The cost of construction at the present time is not higher on American ships than on foreign ships. I understand that it will cost as much to build a ship abroad as it will cost American operators, for instance, to buy a vessel from our Government.

Q. What is the basis of that?

Mr. O'Connor: You are in the 1936 Act now.

A. Let me go back and say it this way, and if I must pick [fol. 836] it to pieces on it I will have to do the best I can.

My understanding is that the cost of labor on American ships is higher than on foreign ships.

My understanding, generally speaking, is that all of the other factors cost about the same—maintaining the ship, food supplies, Diesel oil, stevedoring, and what-have-you. They are the same.

By Mr. Galland:

Q. Stevedoring is a matter of labor cost?

A. No. Stevedoring is paid by all vessels that arrive in New York. There is no lower rate for loading or unloading in New York on foreign ships. And in the other ports, like Antwerp and Rotterdam, our American ships pay exactly the same as the Belgium Lines pay.

Q. What is the basis of your information that the cost of construction in a foreign port is about the same as——

A. (Interrupting:) From my general reading in trade papers—I may not be exactly correct, but it is my general understanding. For instance, to buy C-2 vessel here from the Government, I understand for a foreigner to build that ship it would cost him more than the price at which we can buy it from the Government.

Q. I am not talking about a sale of United States vessels. I am talking about the construction of new vessels.

A. I am talking about the comparison to build a foreign [fol. 837] ship and buy one here.

To get into construction here—I don't believe there are any freight vessels being constructed. There are none that I know of, and there is no basis for a comparison.

Examiner Robinson: Isn't it conceivable that somebody in this country might want to build a ship without buying it from the Commission, in order to avoid Government restrictions?

The Witness: I don't believe so. Maybe later on, but not now.

Examiner Robinson: It is possible? They don't have to buy through the Commission.

The Witness: I am sorry; there are some matters here that I am not familiar with, and it is foolish to try to testify to. But I don't know what you speak of—if we buy a ship from the Maritime Commission, I don't know of any restriction on it. We take it anywhere we want to.

By Mr. Galland:

Q. Taking your definition of cut-throat competition as competition which returns less than the cost of operation to the operator, is it not possible foreign flag lines which,

by your own testimony, operate at a lower crew cost at least than the United States flag lines, might engage in competition which, while returning cost to them at a particular level of rates, would not permit United States flag operators [fol. 838] to compete at the same rate on the basis which would return the cost of operation to themselves?

A. That is purely a matter of theory, and I think that——

Q. Just a minute. Why is it a matter of theory?

A. Because you haven't seen instances here, especially where the existence of Conferences control a given trade, where the foreign lines have reduced those levels to where it is profitable for them, but unprofitable for the American lines.

Q. You haven't found it yet?

A. You are not going to point to a particular case, and you are going to theorize about it, and I agree with the theory. On the face of it, that is correct.

Now, I have to say this: Based on the experience and observations I have made of foreign owners, I don't know any of them that are particularly anxious, or that show very much disposition at the tip of the hat to start reducing revenues. The people highest minded here have been foreign lines, particularly some of the English lines. They are not modest about their rate demands at all. To the contrary.

Q. When you say "high minded," do you mean high rate minded?

A. High rate minded.

Q. What has your experience been with respect to your load factor since the termination of the UMA agreement?

A. To what extent? Have we been carrying full ships, [fol. 839] you mean?

Q. Yes.

A. We have been carrying reasonably full ships.

Q. Have you any information as to whether Conference carriers have been doing approximately the same?

A. I have read the financial statements of some of the lines engaging in the trade, and all seem to be doing very well—have been.

Q. Do you know anything about the load factors of your non-conference competitors in this trade?

A. I have to say I do not.

Q. Now, I understood you to testify yesterday that you have occasionally passed up traffic to the Myer line.

A. Yes.

Q. Rather than reduce your rates.

A. That is right.

Q. Isn't it a fact that you have been in a position to do that because of the circumstance that you have been carrying pretty good cargoes during that period?

A. Well, to put it one or two different ways, that could be one way. I would say this, and most of the shippers and most of the Conference lines will agree to this testimony, that over the years my company has not been interested in depressing unnecessarily the rates. We believe——

Q. Isn't——

[fol. 840] A. Let me answer the question.

We believe in reasonable rate levels. Because we are a non-Conference line, there are hundreds of occasions when shippers will come to us and ask for all sorts of ridiculous rates, because we are independents. I say, "Do you need that rate? Aren't goods moving freely at our rate or the Conference rate?"

"Yes, but you are not the Conference."

We say we don't want that business.

Q. Isn't it true that what you regard as reasonable rate level in a particular situation is dependent upon how badly you need the business that a particular rate would produce?

A. No, it is not. After all, my company——

Q. In what respect is that statement not true?

A. Pardon me?

Q. In what respect is it not true that what constitutes a reasonable rate depends on how badly you need the business?

A. I don't believe I am able to give a very sensible answer to that question.

Mr. O'Connor: You have two questions together. Let him answer the first one. You have two questions.

A. I would say this: I say that I don't consider that certain rates are reasonable rates. I said I didn't always base my consideration of what was a reasonable rate on my

need for a cargo, and you asked me to what extent is that [fol. 841] true. I just have to say again what I consider to be a reasonable rate is not at all necessarily based on my need for a cargo. We consider we are in a line service. We have two sailings a month. We don't desire, and we won't pop our rates up and down according to the need for a cargo. At times we don't get all the cargo we could possibly cram into the ship. We are not running around and saying, "We will run our rates down 50 per cent if you give us the business." We are running berth service. We have been in business for 20 years, and I hope we will be in business for much more than 20 years.

So why would we be popping our rates up or down according to whether we need 100 pounds of cargo? Certainly we would not. It is totally true what I say.

Q. Generally speaking, do you not make rates on a basis that you think will give you the best possible revenue over a period of time for the number of sailings your line maintains?

A. It is true we quote rates and establish rates that we think will give a reasonable chance to get business, and which rates will show us a profit. We are not remotely interested in quoting any old rate to get the business. Isbrandtsen is another man who doesn't carry cargo at a loss.

Q. Do you take the position that you can, under all circumstances, obtain rates that will yield a profit to your [fol. 842] line regardless of the volume of the cargo moving?

A. I understand I will either obtain rates that will cover our costs with a margin of profit, or we won't carry that cargo, if I know it.

Q. Do you adhere to that theory to the point where you claim you would abandon operations if you couldn't maintain them at a profit?

A. That is a mighty, mighty far-fetched question, but I will say it this way: During 1930 the foreign trade of this country dropped 40 or 45 per cent, and at times the going was mighty hard for every line in the business, independent or Conference, and in our Trans-Atlantic operations, many, many times there was not sufficient cargo available for

either our ships or any other ships. But on those occasions we didn't tear our hair up and throw it out the window and say, "All bets are off, anybody who wants to bid on our space, come and do it." We maintained the exact levels through it, and went on to further sailings.

There is no use trying to pin me down to a place where it can be made to appear that my company, as to rate policies under my direction, are throwing rates up and down according to the need for cargo for specified business. We are trying to stabilize business, and have succeeded as much as any line, whether members of the Conference or not.

Q. Although you don't do it from sailing to sailing, is it [fol. 843] not true that you would adjust your rates over a long period of time in accordance with the volume of cargo offering and the amount of cargo you needed to fill your ships as full as you could get them?

A. We adjust our rates in accordance with, and in exactly the same manner as any well-run steamship operation, Conference or not Conference.

I suppose you have seen in the newspapers that a great many of the world's greatest manufacturers of goods have begun to reduce their prices. Why? I suppose because it is becoming a buyer's market. There is not this shortage of goods. I suppose in any trade and industry there must be some adjustment of freight rates based on trade conditions that exist, and our position in that is exactly the same as any well-run berth operation. No different.

Examiner Robinson: Let's have a short recess.

(A short recess was taken.)

[fol. 844] Mr. Galland: Mr. Examiner, I would like to have the record show that the excerpt from the Alexander Committee Report which I presented to Mr. Crinkley is printed at page 416 of Volume 4 of that report, the title of which is "Investigation of Shipping Combinations under House Resolution 587 by the Committee on the Merchant Marine and Fisheries, House of Representatives, 63rd Congress."

By Mr. Galland:

Q. Do you claim, Mr. Crinkley, that the level of conference rates is artificially high?

A. As a general thing, it is my opinion that they are unduly high.

Examiner Robinson: I do not mean to be too unduly suppressive here, but don't you think we ought to limit that to these conferences involved, sir? You have meant that, but you did not say that. You said, "conference rates."

Mr. Galland: All right. I so limit the question.

By Mr. Galland:

Q. Your answer is the same?

A. Right.

Q. Are your rates any higher than they would be if the conference rates were lower?

A. Would my rates be any higher if——?

Q. No; are they any higher than they would be if the conference rates were lower than they are?

[fol. 845] A. That would be extremely difficult to say.

Q. If the conference rates were to go down by, let's say, 10 percent, would you attempt to meet such competition as the new level of conference rates provided?

A. We certainly would have to take any level of rates into effect, generally speaking, in the establishment of our freight rates.

Q. You do not claim that you can make your freight rates exclusively on the basis of what you need without at least being aware of the competitive rates of other carriers, is that correct?

A. I think that the excessive rates of other carriers is always an important factor in rate-making. It is not the only consideration, by any means. It is one of the important factors.

Q. Is it not a fair statement that when a shipper comes to you and asks you for a particular rate, that it is likely to be a better rate from his standpoint namely, a lower rate, than the rate that he has to pay to the conference or some of the others of your competitors?

A. I find that shippers in buying transportation are just like you and I and everybody else in buying anything. If they want to get the best value they possibly can, they would like to get the lowest price for any given commodity or serv-

[fol. 846] ices that they can get, taking into consideration their needs. It is a very natural thing.

Q. I am not just thinking of your own line specifically, but speaking of United States Flag carriers in this North Atlantic trade as a group. Do I understand correctly that you think the conference system is disadvantageous to the interests of those carriers collectively?

A. That the conference system is disadvantageous to the carriers? No, I do not, because I don't think they would be in the conference unless they thought there was some advantage there. I don't know all of their considerations, but that is my assumption.

Q. Do you think it possible that if it were not for the influence of the conference system upon the rate level, foreign flag carriers might be able to get by at a profit at a rate level under which the United States flag carriers were unable to operate?

A. I think the foreign carriers would always be likely to get as good a rate as they could, as good as the market would afford, from my observation.

Mr. Galland: I am going to ask that that question be reread to you, as I would like to have a more specific answer, if you can give it.

(The reporter read the question.)

The Witness: I don't mean to criticize, but I don't think [fol. 847] that is a good question.

By Mr. Galland:

Q. I would like you to take it as it stands and give me the best answer you can make.

A. In that case, I will have to repeat my understanding of the question. You say there, would it not be possible, except for the conferences influence, that the foreign flag carriers would be able to quote rates at which they could make a profit.

I don't think what they are able to do in the way of establishing a freight rate that would pay them a profit has the remotest thing to do with the conference. That must be a fair answer to that question.

Q. Let's leave the conference aspect of the question out

of account for the moment. Assuming a state of affairs in which there was wide open competition, without necessarily characterizing it as cut-rate or anything of that type, do you think that foreign flag carriers, generally speaking, can break even or earn a profit at a lower rate level than United States flag carriers?

A. I do think so.

Q. And do you think that in the absence of a conference system, and under a system whereby nature took its course in a competitive way, foreign flag carriers under wide-open competition would have it within their power to drag [fol. 848] the United States flag carriers from a particular trade?

A. I doubt it very much.

Q. Why isn't the answer yes, in view of your answer to the preceding question?

A. For a very, very obvious reason, and that is, on at least a substantial number of commodities that we carry, our rates are less than the conference; but I don't get all the business even on those items.

Q. My question was postulated upon the absence of a conference arrangement in a particular trade.

A. What I am saying is, because one carrier offers a lower rate than another carrier, I don't think it necessarily follows that carrier with the higher rating will go out of business, not necessarily so. That is based on experience here for 19 years with Isbrandtsen.

Q. But you do concede that foreign flag carriers can earn a profit at a lower rate level than is necessary to return a profit to the United States flag carriers, foreign and United States costs of operation being what they are?

A. I believe that a foreign flag carrier or at least some of them can earn a profit at a somewhat lower rate than an American carrier can at that rate. How much lower is something I am not prepared to say. I don't believe I can calculate exactly the difference.

[fol. 849] Q. Do you feel that if there were a sufficiency of foreign flag carrier tonnage in a particular trade, operating at lower rates than United States flag tonnage in a particular trade, shippers would tend to give their business to the foreign flag operators?

A. I think there would be several different considera-

tions in that. In previous years, before the war, when I was dealing with a matter of rates and of getting business, for some foreign flag lines, I very often found that the answers to my solicitations, even if I had a better rate, from a great many shippers was, "We desire to patronize American flag carriers."

Q. And were they willing to pay for that privilege?

A. They did. They not only were willing, they did so.

Q. Let me ask you how many times you encountered that condition, and if you remember, the names of the shippers who expressed that opinion.

A. I cannot give you an account of the times. That goes back for a period of 10 years. Let me see; I recall very specifically one occasion. I am trying to think of the name of the shipper, because I got a kick out of it.

Q. Now, I won't press you, if you cannot remember.

A. It was a very interesting incident. I would like to recall it, but I am sorry I cannot. And the fact is that a number of shippers expressed a preference for American lines, [fol. 850] and that, with other considerations, is one reason that my firm now is dealing with American tonnage, rather than foreign.

Q. What proportion of the package goods cargoes that you haul is controlled by freight forwarders?

A. I am not absolutely certain that I can give an exact answer to that question, either, because there are a great many shippers that specify through their forwarders as to which vessels shall be used; and yet, when those forwarders appear on the scene, as a matter of policy, they like to have it appear that they control it. I never have been able yet to determine any reasonable percentage of the cargo that is controlled by forwarders.

Q. Do you know of any case where the forwarder who does control the cargo would offer it to a United States flag carrier solely because it was a United States flag carrier even though it was going to cost that forwarder's principal a higher freight rate than if the forwarder shipped via a foreign flag carrier?

A. Well, I would say this: I have seen many, many occasions where a forwarder who appeared to control business shipped it with carriers whose rates were more than the

rates of my company. I have seen that literally thousands of times.

Q. But you don't know in those instances whether the forwarders' carrgo was subject to routing instructions by [fol. 851] either the shipper or the consignee?

A. No. We have interior solicitors in Chicago, Cleveland, and several places, and they very frequently have reported that the cargo of such and such a firm was moving through a given forwarder and the control of the routing was left to that forwarder.

Q. You would not assume, Mr. Crinkley, that a forwarder would long remain in the forwarding business if he exercised his expression to route the cargo by any line that did not give the best freight rate that was available for the movement of that cargo to its destination?

A. I have been working with the Isbrandtsen Company 19 years. 18 of those years have been spent in New York, and about 16 or 16½ of those years have been spent as a responsible department head, responsible to the firm for getting business. In other words, I was in charge of the traffic department, and I know of many forwarders that have stayed in business during all that long period, that have not been disposed to ship with Isbrandtsen Company, even when our rates were better. They have retained their accounts and have apparently prospered. There were other considerations, I presume.

Q. Now, I have sat through proceedings in which forwarders testified on this subject, and I have heard many forwarders state that they tend to favor the use of United [fol. 852] States flag carriers, other things being equal. Is that approximately the way, does that represent approximately your observation of the way in which forwarders operate?

A. Well, I can't say that this is true of the forwarders as a whole. It undoubtedly is true of some. Today, if I understand it right, there are about 600 forwarders in New York. In 1930-39, there were about 250. What the attitude of those 600 is today, I don't think any man knows. In your hearings where forwarders are involved, I presume that 25 was the top number that you heard out of 600.

I don't find it possible in my own knowledge to be very

specific about what forwarders as a whole think about anything.

Q. And you don't purport to accept as a generalization my paraphrase of the forwarder testimony on this point?

A. That is right.

Q. You neither accept nor reject it as being generally true?

A. I said it may be true of some. It is undoubtedly true of some. But I cannot say more than that.

Q. Does Isbrandtsen act as a common carrier of full cargoes; or is that strictly on a charter basis?

A. I don't believe that I can understand exactly that a common carrier might be—I suppose there might be such a [fol. 853] thing as a common carrier carrying a full cargo of one item, although the Maritime Commission has sought to set up a different definition of it.

Q. That is not your general practice?

A. No. A full cargo means a charter or tramp transaction.

Q. You do not file any tariffs with respect to full bookings, is that right?

A. No. They are not subject to regulations.

Q. You testified yesterday that the type of contract which you used, which we have now put in evidence as Exhibit 9, was an exceedingly mild form of contract?

A. Don't you agree with me since you have seen it?

Q. Would you be any happier about the conference contract if it were so drawn that you could characterize it as an exceedingly mild form of contract?

A. It is my opinion that if the conference lines separately, as individual carriers, used such contracts, it would be one thing; but if the conference as a group are allowed to do something that would tend to give them a monopoly or to close access to a substantial amount of American business to my company, an American firm with American ships, then we would object and think it is objectionable.

Q. Would you be content if the conference would substitute this form of agreement for the one now used? (indicating Exhibit 9.)

[fol. 854] A. No, sir.

Q. Does your company make any exclusive contracts with anybody for anything other than transportation?

A. Well, I only have to do with transportation. I presume not, but I don't know. I can't answer the question. If you asked me anything concerning our berth operations, I think I could come near to answering it; but if you go into other departments, I am so busy, I cannot keep up with that; I can't answer it.

Q. You don't know whether you have any exclusive contract with a supplier of fuel oil, for example?

A. I don't know, but I don't think so. I do not know. I will have to have that answered. I don't think so.

Q. Do you know whether you have any exclusive patronage agreements with labor unions?

Mr. Cockrum: Mr. Examiner, isn't this going very far afield?

Examiner Robinson: I think it is quite far afield.

Mr. Cockrum: I think I am going to have to object to it.

Examiner Robinson: I would object to it even if you didn't, because it does not involve the same characteristics as a common carrier at all.

[fol. 855] Mr. Galland: Let us see if it doesn't. The witness has testified that he objects to the use of exclusive patronage contracts by the conference because they deprive Mr. Crinkley's company of access to shippers.

Now I am about to ask, and have asked, whether he has any exclusive patronage contracts with labor unions. I submit that the effect of those contracts is to deprive seamen and others who might be candidates for employment by Isbrandtsen Company of access to Isbrandtsen for the sale of their services; and I would like to know what the differences in the two situations are at that point.

Mr. O'Connor: I contend that these contracts have to do with transportation of cargoes.

Examiner Robinson: I agree with you. Don't argue any more. I think it is objectionable.

By Mr. Galland:

Q. I understand that one of the grounds of your objection to the exclusive patronage contract system is that it gives the foreign flag members of the conference access to shippers which your company, as a United States flag carrier, does not have; that is correct, isn't it?

A. That is true.

Q. Would the exclusive patronage contract system be more palatable to you if all the conference members were United States flag carriers?

[fol. 856] A. I will have to more or less repeat something that I said before. Perhaps this time I will put it in slightly different words.

My company is and has been prepared to meet competition in its operation of whatever type they are. In our tramp operations, there is probably the most vigorous in that trade of anything imaginable. We are perfectly ready to meet that. We object, when a group of common carriers—and a common carrier of itself is supposed to open its facilities to the public at equal rates for all. Just the very name of it would mitigate against any exclusive patronage arrangements. But if a group of foreign carriers, composed of foreign and American lines or of American lines, seeks to monopolize the trade by gathering up all of the business through these exclusive patronage agre-ments, we think they are not only objectionable to us, but in violation of the law. What is the purpose of the contracts except to monopolize to the greatest extent possible the business on any given trade route? Why should it be that in common carriers?

I have said before, and the Examiner let me put it in, that the conference idea in transportation has been brought over in the domestic field, we have the railroads with conferences; but it is unthinkable that they should be allowed to use an exclusive patronage conference contract, I don't care [fol. 857] how mildly phrased the clauses of it are. It is just simply impossible. That is the position that we want to have fully understood.

Q. Your answer to the question then, is no, you would not find these agreements any more palatable if the conference members were solely United States flag carriers?

A. That is true. Our position is the same as to whether the conference was composed solely of American flag lines or foreigners. In the domestic transportation in the intercoastal field, there were only American lines involved. In the Swain & Hoyt case, where the Commission itself forbid the use of this procedure and was upheld by the Supreme

Court, they were only American lines in there, and yet it was forbidden.

Q. And while the presence of the foreign flag carriers in these conferences is perhaps what you regard as an added insult to your company, it is not the basis of your objection to these contracts?

A. We don't like the thought that the foreign lines coming to a good American shipper can get some business from them and we, going up there, find that he says, "We can't deal with you. We have made a deal with this group."

Q. You would not favor discrimination against any particular carrier based on his nationality, I take it?

A. No; I don't think American lines ought to be dis- [fol. 858] criminated against in our own country, however, and that is what I think is present today.

Q. And you feel that American lines should not be discriminated against in foreign countries, too, don't you?

A. Very definitely, that is our opinion.

Q. And the same principle would apply at both ends of the line, I take it?

A. Yes.

Q. Is the unanimous voting rule, as set forth in these conference agreements that are under discussion here, one of the features of the system that is particularly offensive to you?

Examiner Robinson: Might I just ask a question here. My recollection is that there is some doubt as to whether or not that rule is unanimous.

Mr. Galland: I said, as expressed in these agreements.

Examiner Robinson: In other words, you take both sides into consideration, is that right?

Mr. Galland: That is right.

Examiner Robinson: I don't think the parties are in agreement, as I remember it, that there is a unanimous voting rule. Am I right on that?

Mr. Galland: Well, it requires a unanimous vote of the members present at a meeting, and it takes a majority of [fol. 859] the membership to constitute a quorum.

Examiner Robinson: The point I am getting at is, there is some doubt as to whether both sides take the same view on what that means.

Mr. Galland: I said, as expressed in these agreements.

Mr. O'Connor: Mr. Examiner, may I point out in connection with my objection to this line of testimony that this question goes to the conference agreement, the form of the conference agreement, and one particular form of the conference agreement. The rest of the testimony has gone to the greatest extent to the shippers' contract, the form of contract which the conference is using with the shippers.

Now, the witness is being asked what he thinks of the conference agreement, the clauses of the conference agreement. This case is grounded on the complaint of Isbrandtsen against three or four words in the conference agreement, that is all: "Contract/non-contract rates."

Examiner Robinson: Perhaps Mr. Galland will tell you what he has in mind.

Mr. O'Connor: Well, he is asking the witness what he thinks of a provision in the contract agreement, not in a shipper's contract, of a unanimous vote when the conference sits down.

Mr. Galland: They are both under attack in the complaint [fol. 860] before the commission.

Examiner Robinson: Yes, your conference agreement is basically attached by you——

Mr. O'Connor: It is not basically attached; specifically, just one provision of it.

Examiner Robinson: That is why I say, maybe he will tell you why he is trying to hook it up to something else. If he is just talking about the unanimous vote rule as such, conceivably you may be right.

Mr. Galland: I think Mr. Crinkley testified as to the unanimous vote rule as to the effect that one foreign flag carrier could control the conference by resorting to the power that that rule gave.

By Mr. Galland:

Q. Isn't that correct?

A. There was some testimony in connection with Mr. Hupper's question about some clause or phrase or paragraph in the conference agreement.

Q. Mr. O'Connor, as I recall, objected previously to Mr. Hupper's interpretation of the unanimous voting provision.

I want to find out whether that is one of the objectionable elements here. As I mentioned before, I think——

Mr. O'Connor: Well, it is not set forth in any pleading here——

Examiner Robinson: Are you just speaking of any kind [fol. 861] of an objectionable feature of the agreement, or are you going to tie it in with the contract rate?

Mr. Galland: I want to find out what, in Mr. Crinkley's opinion, is the bearing of the unanimous voting rule upon the contract rate system, especially in view of his reference to the power that it gives to the foreign flag carriers.

Examiner Robinson: Now we are getting somewhere. That is what I wanted to be sure.

The Witness: I understand from the discussion that previously took place that this unanimous vote rule had something to do with the declaration of an emergency, where there was some situation of rate adjustments by non-member carriers, to declare an emergency so as to leave each line free to meet a given situation as they saw best.

Mr. Hupper: I think we can clear this up, Mr. Examiner.

Mr. O'Connor: Mr. Examiner, at this point the witness is right; it has nothing to do with anything connected with the shipping agreement, nothing to do with the fixing of rates for the shipper.

The Witness: I don't think it did.

Mr. Galland: I think he can very well tell me——

Mr. O'Connor: But time is some element here. We will reach a point here where we will have to stop this collateral [fol. 862] attack, which does nothing but waste the time of the witnesses from Isbrandtsen. We will reach a point where we will stop it and test it out.

Mr. Galland: Well, of the time that has been taken so far, I have taken but an hour and three-quarters.

Mr. O'Connor: Well, I am not saying it personally, we are not going to exhaust this hearing much longer unless you produce some witnesses. We know how to close it.

Mr. Galland: I suppose the answer would have been yes or no, instead of the time that has been taken by our discussion. Whichever answer he gives I shall certainly stop.

Examiner Robinson: Go ahead. If there is any connection, we will accept it; if not, we will rule it out.

A. I don't like either the majority rule or the unanimous vote feature of these conference agre-ments. Both of them are bad. In the majority rule you leave the thing in a position where the foreign lines can take some action concerning American cargo that will affect an American carrier, and that is ridiculous on the face of it. If you have the unanimous voting rule, then you fix it so that some carrier that does not have a direct interest in the question involved, can control it. We have seen in these United Nations there what this veto provision has done for it; it has destroyed it.

[fol. 863] By Mr. Galland:

Q. You don't like the unanimous vote rule, because under it, a foreign flag carrier——

A. Or any one carrier.

Q. —or any one carrier can veto what everyone else wants?

A. Yes.

Q. And you don't like the majority rule, because the minority carrier is left without full protection of his own interests, is that right?

A. Because that leaves the foreign carriers in practically every conference in the United States in a position to control it if they choose to do it.

Q. And that pretty much leaves it on the basis that there isn't any voting provision that you would feel happy about?

A. I don't ——

Mr. O'Connor: Again, Mr. Examiner, may we keep the gallery of counsel here from intruding into the hearing, which is constantly going on. I don't mind them passing material to counsel, but this constant butting in by the counsel for the carriers; I think if they want to appear, let them come up and give their names and say, "We represent so and so."

Examiner Robinson: I fairly agree with you.

Mr. O'Connor: There is a babble of babbling behind me [fol. 864] by a lot of cartel lawyers that is distracting me.

(Laughter)

Mr. O'Connor: I can only hear out of one side of my head, and I am listening to the witness. If they do not cease and desist they ought to be thrown out.

Examiner Robinson: I have not heard anything today up to that remark, and I am sure Mr. Turk has made it.

Mr. Turk: I am awfully sorry, and I apologize.

Mr. O'Connor: Mr. Turk has been running out for books for the attorney for the Commission.

Examiner Robinson: Well, you cannot prevent him from being a messenger boy if he wants to.

Mr. O'Connor: If he wants to appear in the case, let him note his appearance and let him say who he represents. I don't know who he represents.

Mr. Galland: I think Mr. Mahoney ran out for the book; and he did it as a favor to me.

Examiner Robinson: Well, as long as they do not put any vocal efforts forward, I have no control over them; but if they do that, I will agree with you and will ask them to stop. However, what they do by hand-work or something like that, I cannot prohibit.

By Mr. Galland:

[fol. 865] Q. You do not consider that your line is aggrieved by the fact that the conferences have not, to your knowledge, sued to enforce the penalties under their contracts, do you?

A. No. The threat, of course, is constantly there, and there is a lot of these shippers who I think are not sufficiently aware of actually the circumstances surrounding this conference agreement.

Q. From your standpoint, these agreements would be worse if they were enforced in court than if they are not, isn't that right?

A. I suppose we might be able to say that. I say the threat is there, and a great many people are fearful of it.

Q. I think you testified that before World War II, contract rates in this trade were published on about 200 out of 2,000 items in the conference tariffs, or about 10 per cent?

A. I testified about 100 to 200 items were subject to contract out of approximately 2,000 in the tariff. I recognize

the fact that those tariffs are on file. That is a statement that I made.

Q. That does not necessarily mean that contract rates were limited to 10 per cent of the traffic moving, does it?

A. No, I think I said in some previous testimony that it was my studied thought that approximately 10 per cent of the items were subject to contract, but a substantially larger [fol. 866] percentage of the cargo was cargo that moved under contract rates.

Q. Would you have any idea whether you could go so far as to say that substantially all of the traffic moving was subject to contract?

A. No; that would be an extremely ridiculous statement for me to say, and therefore I won't say it. My estimate is probably 30 to 35, maybe 40 per cent of the cargo that moved was subject to contract. I don't think it was over 35 per cent, but I am not sure. But to say that all or nearly all or practically all, that would be a definite mis-statement. It is not so.

Q. Was the contract rate system as applied to that extent a serious obstacle to your solicitation and procurement of business?

A. Well, if the contracts applied to, let's say, 33⅓ per cent of cargoes moving in a given trade, if that was applied then, that would be an obstacle that we have to meet in carrying forward our business at the same time. Now, of course, we are talking about a vastly different thing when we say that every item is under contract. There was another feature at that time that was rather nasty, and that was this. Say that there was a shipper who had to ship one item that was under contract and he had 10 other items that were not subject to contract. The contract on that one [fol. 867] item bound even the items that were not under contract.

Q. You mean by the terms of the contract agreement; you mean it was an all-inclusive agreement?

A. Yes. In other words, if he signed an agreement on—what will we say—automobiles, and he had something to ship that was not automobiles and was not subject to the contract, still that contract bound him on that item, is my recollection.

Q. I don't understand how that can be, Mr. Crinkley.

A. Well, you ought to understand that, because before this Commission right now, that question is very seriously up, and they are studying it. They have got complaints in some trades and shippers who say this: "We have a contract on this item. There is no contract on this. Nevertheless, we are bound under that to ship that with the conference. But shippers who ship only this item and are not bound with the conference can ship by an independent; and we don't think that is fair" and so forth. Your Commission is investigating that thing right at this particular moment.

Mr. Hupper: Do you remember when that hearing was?

The Witness: I don't think there was a formal hearing yet. My recollection is, I saw a release where the attention of various concerns was being called to that particular kind of a situation.

[fol. 868] Mr. Galland: I think we would have to see those contracts before we could understand how that could result in a suit.

The Witness: However, to go back to the question we were talking about there, the imposition on 30 to 35 per cent of the cargo moved was a definite obstacle and a hindrance to our business, a handicap; but, of course, no such handicap as we have now; and the thought was to put every item in the tariff under contract.

By Mr. Galland:

Q. Do you operate in any trade at the present time, or have you ever operated in any trade, in competition with a generally applicable and exclusive patronage contract system?

A. Yes, we have, to the Far East.

Q. When was that?

A. Now.

Q. Are you getting satisfactory cargoes under that form of competition?

A. I regret very much to say we are not. It is a very sad statement, but a true one. We are not getting a reasonable amount of the cargo in that trade, because of that system.

Q. What are your load factors at the present time?

A. One sailing a month.

Q. What is your frequency of sailing, say, beginning in 1946 down to the present? Do you have more than one [fol. 869] sailing at one time in that trade?

A. No. UNRA turned shipping back to private hands on March 2, 1946. Of course, there were a good many lines ready at that time to re-commence their operations. We applied to buy American ships, but the first ship was delivered to us in January 1947. So our Far East service, as to the post-war period, began in January 1947.

Q. Pre-war, did you operate the Far East?

A. We operated to the Far East pre-war with a twice monthly sailing, the Maersk fleet, the vessels under the Danish flag.

Q. Did you operate at that time in competition with an exclusive patronage Conference contract system?

A. Yes, we did.

Q. Have you filled two ships a month at that time?

A. Yes.

Q. And now you are filling one ship a month?

A. Yes.

Q. Or at least, you are sailing one ship a month, not necessarily filling it?

A. Yes. There is a very extensive set of differences. The first operation, we operated outbound, and the control of the homeward sailings was in the hands of Mr. A. P. Moller of Copenhagen. Mr. A. P. Moller is a man who likes the Conference system, and during those years, on the homeward sailings, the line was in the various Conferences [fol. 870] involved. So it was kind of an ambiguous operation there involved, to some extent. But certainly the situation is largely different than with our American tonnage, and a big increase in the number of competitors in that particular service. There are 23 lines in the Conference, I believe, I think it is 23, and then there were 14 or 15. There are so many different factors, I just cannot see that the circumstances are readily comparable.

Q. You entered this trade after World War II, in the face of an existing exclusive patronage contract system, is that right?

A. Yes, and on the basis of a trade where we had operated since 1928. That is when the service out there was originally started.

Q. Has your post-war operation returned a profit to the company?

A. I think it has been reasonably profitable, but we have found it necessary to change our route. We do not go through Panama as we did before the war; we go by Suez and carry cargo for India en route. Very fortunately as American carriers we have been able to participate in the Army business to Korea and Japan. On commercial business to the Far East, the exclusive patronage Conference rate system has made it difficult for us to get business, and [fol. 871] we have not been able to obtain enough business to sustain the service on the basis of that business alone, whereas before the war we did.

Q. And hasn't that been rather generally true, that Government cargoes of various kinds have made important contributions toward the total carryings?

A. You don't quite follow what I mean. On Government cargo, we don't have to be concerned with a Conference contract, because none of its branches will sign a contract. The business is available to us along with others. We share.

So we have been able to get a fair share of the Government cargo moving to Japan, Army cargo and Navy cargo moving to Japan and other Far East ports.

You asked me if we had been able to successfully meet this contract situation out there. I think the inference was rather plain that we could. Why did we object to it? And I am telling you. We are operating perhaps largely on the basis of the fact that we have been able to participate in Government business. I wouldn't say that alone. I don't like to make such a sharp statement on a rather broad statement of that kind.

Examiner Robinson: I don't think this question has been asked, Mr. Crinkley:

In those trades where you operate and there are contract rates in effect, which rate does the Government pay? [fol. 872] The Witness: You mean if the Government ships with the Conference?

Examiner Robinson: That is right.

The Witness: The Army does not pay either the contract or the non-contract rate. They pay so much for the space occupied in the ship. In a common carrier operation for shippers, you cannot make a general arrangement of that kind; you have got to take each item and rate it out.

But as I say, on Army business, they have these space arrangements with all the carriers, and they pay so much for the space used.

Examiner Robinson: How about the other agencies? Take, for instance, Agriculture; just assume that it shipped something.

The Witness. No, sir; they pay the same commodity rates as commercial shippers would pay.

Examiner Robinson: In other words, they would pay the higher rate?

The Witness: On, no, no, by no means. They always pay the contract rates and they never sign the contracts.

Examiner Robinson: That is what I am getting at.

The Witness: Yes.

By Mr. Galland:

[fol. 873] Q. With the Army, it is under a space charter arrangement, and they can fill the space with what they please, is that right?

A. That is right. The Army and the Navy pay for the space that they use in the ship, not for the measurement of the cargo on the dock, of instance; but the other Government departments, the Treasury Department, the Department of Agriculture, the RFC, the Metal Reserve, and the strategic materials section, and all those people pay tonnage rates just as others. They always insist that they shall get the lowest rate, namely, the Conference contract rates that are in effect, and they do get it, and they will not sign a contract.

Mr. O'Connor: Not to butt in, but to simplify this, haven't some of them consistently demanded 10 per cent lower than regular rates?

The Witness: No, sir. UNRA did that, being a purely relief organization; they demanded that they sign no con-

tract and that they get a rate 10 per cent under the Conference.

Examiner Robinson: Under the Contract rate?

The Witness: Under the contract rate. But they signed no contract. We carried considerable UNRA business at equal rates with the Conference.

By Mr. Galland:

[fol. 874] Q. Mr. O'Connor asked you, during cross examination, whether the Conferences guarantee any particular frequency or regularity of service in their shipper contracts, and you said that they did not.

A. That is true. That is what I said.

Q. Would it make any difference to you if they did?

A. Not to us. Let us take that answer; I might have answered it too quick.

It wouldn't make any difference to us if they guaranteed sailings. I don't see that we are necessarily involved with that particular factor. The Conferences seek to justify these Conference contracts by saying that it stabilizes service, which I have contended is not so, that it does not stabilize service, necessarily.

I have pointed out that after the contract was put in effect, the same number of sailings and same schedule continued as it was before; so it obviously is not so.

Q. If it did stabilize service to a greater extent than it promises to do in these agreements, your grievance against the system would be at least as great as it is now, and perhaps greater, is that correct?

A. I did not bring that particular point up at all. I am just saying that the Conference lines don't provide any more stability of sailings than my company does.

Q. You did not bring it up, but your company's counsel did.

[fol. 875] A. But I am saying the stability factor, there is no justification for the Conference contract system. If you asked me, if they put some guarantee as to sailings in there, would that make any difference, I don't see that it comes into the question that I am raising at all. I am just saying it does not provide any more stability than is

the case where the Conference contract system is not applied.

Q. But if it did you would still not like the system any better than you like it under the present provisions of the contract; is that correct?

Mr. O'Connor: Mr. Examiner, the witness keeps saying in puzzlement over the question, the same as I am, he does not know how that applies to Isbrandtsen. What Isbrandtsen's attitude is, why it should be called in question——

Mr. Galland: Well, why did you call it in question?

Mr. O'Connor: I did not call it in question. I just asked the fact, does it have any thing to do with flexibility or regularity of service, and he said no.

Now you are asking him in there, if there should be regularity of service, would he cease to object, or would it make any difference in his attitude.

He does not comprehend it, and neither do I. I simply say that it does not have any bearing on the question that [fol. 876] I sought to answer.

Mr. Galland: That is all I have, Mr. Examiner.

Mr. McGovern: Mr. Examiner, before we leave this question, might I just say for the sake of the record that at one juncture Mr. Galland asked the witness, or, rather, I think the witness testified that the Maritime Commission in itself had from time to time looked into the question of the application of a contract to all commodities when it was only a single commodity that had a contract rate in it.

There was some suggestion that we might examine whatever the situation might be with that.

I just wanted to point out for the sake of the record, and for Mr. Galland's particularly, that in the affidavit of Charles R. Andrews of November 15, 1948, filed with the District Court in the earlier suit in this case, there is a letter dated August 30, 1948, from Mr. Tibbott, Assistant to the Chief, Office of Regulation, United States Maritime Commission, to the North Atlantic Continental Freight Conference, suggesting that there is some discussion that a discrimination results from an application of that system.

Examiner Robinson: Is that included in Exhibit L?

Mr. McGovern: It is not included, and I wonder if perhaps we ought to put it in.

Mr. O'Connor: I will offer it at this point in the testi-
[fol. 877] mony, then.

Mr. Galland: I have no objection, if you want to pass copies out.

Mr. McGovern: The- only have the one copy here. That is the reason I am raising the question now. We will be glad to furnish copies of it tomorrow.

Mr. O'Connor: It was filed by the Conferences in the case. If it may be considered as marked we will have sufficient copies for you in the morning.

Examiner Robinson: Do you want to put it in? I don't want it. Specially, I don't want it.

Mr. O'Connor: I was going to offer it, so I offer it at this time as near the point of the testimony where it was discussed.

Mr. Hupper: I think it is a good idea. Why don't you put it in? We don't object.

Examiner Robinson: Let us mark it as Exhibit 10 for identification; and if you want to put it in tomorrow when you have copies, I think it would be all right.

Mr. McGovern: I was merely suggesting, sir, it probably ought to go in at this juncture, at the conclusion of Mr. Galland's examination, because it was in that examination that the question was raised.

Examiner Robinson: What date is that, Mr. McGovern?

Mr. McGovern: August 30, 1948.

[fols. 878-880] Examiner Robinson: Mr. Hupper wanted to know.

Do you want to give that to the reporter?

Mr. McGovern: I only have my file copy.

Examiner Robinson: Let her mark it so there will be no doubt as to what it is.

(Document referred to was marked Exhibit No. 10 for identification.)

(Discussion off the record)

Examiner Robinson: We will reconvene at 10 o'clock tomorrow morning.

(Whereupon at 4:30, the hearing in the above entitled matter was adjourned.)

[fol. 881] Met, pursuant to adjournment, at 10:00 a. m.—May 12, 1949.

[fol. 882] Proceedings

Examiner Robinson: Let's proceed, gentlemen.

MATTHEW S. CRINKLEY resumed the stand.

Cross-examination (Continued).

By Mr. O'Connor:

Q. Mr. Crinkley, Exhibit 3, which is the four sheets showing the latest corrections in the tariff on file with the Maritime Commission by the North Atlantic Continental Freight Conference, there are designations that articles or items of cargo are carried at a certain charge of so many cents, or so many dollars. I imagine that is per hundred foot, isn't it?

A. It varies. So many cents per cubic foot, or per hundred pounds, or per ton.

Q. Where there is a line, that is weight and cubic foot?

A. Yes.

Q. Those schedules also show the contract rate, and then in a parallel column, the non-contract rate; is that right?

A. Yes.

Q. You are familiar with that?

Q. And these corrections, instead of naming the items, use the types of these items, so that where, for instance, one item heretofore cost $2.45 a hundred pounds, now costs [fol. 883] $2.95?

A. Yes.

Q. I would just looking at the top item.

A. That is correct.

Q. Now, the very last item in this tariff schedule, these corrections, Exhibit 3, gives the contract price of $35,000. It doesn't show what it is. That might be a locomotive, is that correct, some large——

A. Some large, very large item. It sounds a little too high for a locomotive.

Q. That is $35,000, and the non-contract gives $42,000 for the same item?

A. Yes.

Q. Isn't it a fact that if some person signed a contract and shipped that locomotive, or whatever it was, on Ship X of the United States Lines, for instance, he would pay $35,000, wouldn't he ?

A. If he signed a contract.

Q. If that person shipped on that same ship of the United States Lines the identical item, and had not signed a contract, he would pay $42,000?

A. That is the way the schedule is arranged.

Q. From the same port to the same destination?

A. Yes.

Q. And westbound, the highest priced item seems to be [fol. 884] contract $500, non-contract $600——

Mr. Galland: Is that the same exhibit?

Mr. O'Connor: That is Exhibit 4.

By Mr. O'Connor:

Q. And the same situation would exist there if a contract signer shipped that item on Boat X of the United States Line from New York to Antwerp? He would pay $500?

A. That is westbound, Antwerp to New York—yes, if he signed a contract.

Q. And if a person had not signed a contract and shipped the same item on the same boat from Antwerp to New York, he would pay $600?

A. That is the way it is scheduled.

Q. Now, yesterday in the discussion with reference to what happened in the Far East, you were examined and testified to a situation in the Far East, as I recall, under examination by Mr. Galland. In some of those trades as, for instance, the one you talked about, this trade from India to Europe where the fight was on, and where there was no non-Conference member of the trade, and where they wound up with fighting each other, and some of them were carrying freight without any charge whatsoever—you testified along that line?

A. Yes.

Mr. Galland: I don't think he testified quite along that [fol. 885] line.

By Mr. O'Connor:

Q. Didn't you say it wound up that some carried freight without any charge?

A. I don't remember that I said that.

Q. Isn't that what was reported to you?

A. I have heard that is the case. I don't recall having seen it in the papers, but I heard they did get that low.

Examiner Robinson: That is low, all right.

Mr. Hupper: Perhaps they paid something for the privilege of carrying it.

The Witness: They were giving 60 and 70 per cent discount, and so forth, and I presume in some cases they went mighty-mighty far.

By Mr. O'Connor:

Q. Now, the Conference is out of Bombay, India, is it not, where all the lines are in this Conference with which you had some experience?

A. That was one of the ports—one of the ports in India. I suppose that war concerned other Indian ports. It was India. I believe Calcutta, Bombay, Madras, and Karachi.

Q. But in the Conference out of Bombay, India, with which trade you are involved, are you not?

A. From Bombay to the United States, yes.

Q. That Conference. Isn't it a fact that those members [fol. 886] started contending against each other, cutting each other?

A. No, not on the trade route from Bombay to the United States.

Q. Well, you told me something about a Bombay Conference, and I just forget what it was.

A. I brought the point out.

Mr. Hupper: That is not a United States Conference, is it?

Mr. O'Connor: No. The others asked about by Mr. Galland were not, either.

The Witness: The Conference from Bombay to the United States ports would be United States Conference.

Mr. Hupper: That is a different one from the one you are talking about now?

The Witness: That is different from the one that operates between India and Europe.

By Mr. O'Connor:

Q. You were asked yesterday by Mr. Galland about the difference in operation costs in the North Atlantic trade between foreign flag ships and American flag ships, is that correct?

A. Yes, sir.

Q. From the time the Shipping Act of 1916 was passed until about 1926, which is the date, I understand, when the Conference contract system was first applied in that trade— [fol. 887] is that correct?

A. Sometime about that time. I am not exactly certain myself about the exact time they started to use it.

Q. Between 1916 and that date, whether it is 1926 to whatever it is, was there a difference in the cost of operation between the American flag ships and foreign flag ships in that trade?

A. Yes. We should keep in mind that from 1916 to 1920 all ocean traffic operated under war conditions. From 1921 to 1926, of course, there was a difference in the cost of operating foreign flag vessels and American flag vessels.

Q. Now, between the time the contract system was applied in the North Atlantic trade, around 1926, whatever the date is, and 1936 there was a difference in the cost of operation?

A. Yes. The foreign flag vessels, of course, could operate cheaper.

Q. During that period, they used the contract system in that trade, is that correct?

A. Yes.

Q. Would you say during that period the use of the contract system in that North Atlantic trade had contributed toward the promotion of an American Merchant Marine?

A. No. Nobody can claim that.

Q. Now, in 1936 Congress passed, and it became a law, [fol. 888] the Merchant Marine Act of 1936, is that correct?

A. Yes.

Q. Which provided for a subsidy?

A. That is true.

Q. Not only a construction subsidy but an operation subsidy?

A. That is right.

Q. To take care of that difference in the cost of operation, is that correct?

A. That is correct. The American ships were to receive a subsidy as to building and operating which would put them on a parity with the foreign lines operating in American trades.

Q. But since that time, isn't it a fact that the foreign flag lines have charged the same rate in that trade as the American flag lines?

A. Yes, those in the Conference.

Q. And the American flag lines have charged the same rate as the foreign flag lines?

A. That is true.

Examiner Robinson: I think we should get on the record that the operating subsidy was not given indiscriminately. So far only two lines in a given trade get the subsidy.

Mr. Galland: You mean no more than two.

Examiner Robinson: Yes. Because the record, standing [fol. 889] as it is, might create the impression that every American line gets a subsidy.

The Witness: I think if we are going to put that in, we should put in that in the period between 1936 and 1941 that every American line in the North Atlantic Continental trade got the subsidy.

Examiner Robinson: All I am interested in is accuracy.

By Mr. O'Connor:

Q. Whether they got the subsidy or not, each line charged the same rate, is that a fact?

A. That is right.

Q. The line that got the subsidy charged the same rate as the line that didn't get the subsidy, isn't that correct?

A. No. I think now we are talking about the pre-war period, and there were no American lines that—the American lines in the Conference got the same rate as the foreign flag lines in the Conference.

Q. But since that time, and down to date, isn't it the fact

that the subsidized line charged the same rate in that trade as the non-subsidized American lines?

A. Yes. And I might add here that there is one subsidized American line in that trade now—the South Atlantic Steamship Company.

[fol. 890] Q. So isn't it a fact that the Government contribution out of the moneys of the taxpayers in the way of subsidy to some of the American lines in that trade has not reduced the rate in that trade whatsoever?

A. It has resulted in no reduction of rates.

Q. So today, as always, the rate is the same for American lines, subsidized or unsubsidized, and foreign lines?

A. That is true.

Mr. O'Connor: That is all.

Mr. Galland: May I have a couple of questions?

By Mr. Galland:

Q. Now, relative to your testimony yesterday, Mr. Crinkley, as to the recent rate war among the lines of the Far East Conference, that is between the Far East and Europe?

A. No. That was between India and Europe.

Q. Wasn't that condition caused by the withdrawal of one of the member lines from the Conference?

A. No, sir. It was caused for this reason: There was an outside line admitted in the Conference, and one of the Conference lines didn't like it, said they were not consulted sufficiently about it. And on top of that, one of the Conference lines claimed some peculiar right to the cargo moving from certain areas. The other lines differed. They couldn't compose their differences, and so they split, and the war started. It was all among the Conference lines. It was not [fol. 891] an act of meeting some outside competition, or some instability caused by an outside line, or anything of that kind. It was just a quarrel within the Conference.

Q. I recognize that, but what it involved, as a matter of fact, was substantially the breakup of the Conference, isn't that true, at least during the period of the rate war?

A. The rate war was the outcome of this quarrel between the member lines.

Q. What was the name of the line that precipitated it, do you remember?

A. No. It was a Dutch line. That is as far as I can identify it.

Q. Was it the Holland-Bengal-Burma Line?

A. I can't say whether that is the proper name of it or not.

Q. The rate war did not represent the functioning of the Conference as a Conference; I take it you would say that is true, would you not?

A. No, I certainly would not. One of the very lines that mostly believes in a Conference, this Dutch Line, withdrew from the Conference.

Q. That is what I was trying to bring out, whether it was not the result of the withdrawal of a line from the Conference that precipitated the rate war?

A. They withdrew from the Conference, and the rate war went on from there. But the point I was making when I [fol. 892] brought that out was that the existence of a Conference, of a Conference agreement, of the application of the most exclusive patronage contract rate system, did not prevent a rate war, but, as a matter of fact, was a contributing factor toward it, considering the circumstances.

[fol. 893] Q. Well, the point that I wanted to have you make, and which you have now made, to clarify your previous testimony, is that this rate war ensued after the withdrawal of a line from the conference.

Mr. Galland: That is all I have.

The Witness: I wanted to make it clear the conference system, and the use of a contract system, does not necessarily call for stability. It may result in the absolute, utmost of instability. The happenings in that trade is the proof of it.

By Mr. Galland:

Q. I think you and I both agree that there is nothing in this system that prevents the breakup of a conference.

A. That is certainly true, sir.

Examiner Robinson: We all understand each other.

Mr. Malatzky: May I ask a question before Mr. Hupper starts?

Cross-examination.

By Mr. Malatzky:

Q. You testified yesterday that the Government is able to ship cargo in the North Atlantic range without signing a contract, but get the contract rate. Is that right?

A. Yes. Of course, there are no contracts since November 1st, and there were no contracts before that time except [fol. 894] on five items.

Q. Was the Government able to ship those five items, and would it be able if the contract were in effect right now?

A. They would be able to ship at contract rates without signing a contract.

Q. From your knowledge, is any of the cargo moving in the North Atlantic range being shipped by Government agencies of a commercial character as distinguished from a military character?

A. I understand a considerable part of the cargo moving to Germany, commercial as well as military, has been shipped and financed by different departments of the United States Government.

Q. What I mean is they are not shipping just military cargo, or cargo of a distinctly governmental character, but are shipping cargo which is normally of a private character?

A. That is right.

Mr. Galland: Let me ask you, what is cargo of a Government character?

The Witness: There is cargo, commercial, being shipped and financed by Government departments.

By Mr. Malatzky:

Q. So that that particular cargo could be considered as competitive with cargo shipped by private shippers?

A. I should think so.

[fol. 895] Mr. Malatzky: That is all.

Mr. Galland: Well, I want to clear that up.

By Mr. Galland:

Q. What do you mean when you say it is competitive with cargo shipped by private shippers?

A. I mean that some cargo items sent over as a part of the Marshall Plan that is financed by the Government or the people of the United States, that it is competitive with goods shipped through private channels, and which are not financed by the taxpayers of the United States. That is what I meant.

Q. Do you mean that if these Marshall Plan goods were not financed by the Government of the United States they would nevertheless move under some other arrangement?

A. Certainly in some degree. I can't say in what proportion. In other words, if the Marshall Plan was not financing, at least some of this cargo movement would nevertheless move through ordinary commercial channels.

Q. You mean some of it?

A. Some of it.

Q. You certainly — mean to say traffic would move in anything like the present volume under the ECA if there were no ECA?

A. Not at all.

Mr. Galland: That is all.

[fol. 896] Mr. O'Connor: Let me see if I can clear it up.

By Mr. O'Connor:

Q. If the United States Government shipped tobacco, buys and paid for it, and ships it to Germany, we will say, the United States Government doesn't sign a contract, but pays the contract rate, is that true?

A. That is true.

Q. If a private tobacco company in the United States had a customer in the same place, and sold tobacco to that customer, and did not sign a contract, or refused to sign a contract, they would have to pay the increased or non-contract rate of that tobacco?

A. That is true, if the contract system was in force and effect.

Mr. O'Connor: That is all.

By Mr. McGovern:

Q. And it was in effect on tobacco from about August of this year?

Mr. O'Connor: It was only proposed to be put on.

A. No, sir. And it was in October that efforts were made to sign up all shippers, and I assume some of the shippers did sign.

By Mr. O'Connor:

Q. The example I gave could be applied to automobile tires which were under contract?

[fol. 897] A. Yes.

Q. That a non-signer of the contract, a private concern of the United States, would have to pay a higher rate than the Government would have to pay, and the Government had not signed a contract?

A. Let me clarify it by saying this. In every ocean trade of the United States where there is a department of the United States shipping material, it demands that where there is a conference, that the lowest rate be extended, and they will not, and do not, and cannot bind a conference contract.

By Mr. Galland:

Q. That doesn't hurt the Isbrandtsen Company, does it?

A. No, sir. It provides for competitive purchase of transportation, and under those circumstances my company has a chance to participate. We have access to that business.

Q. So from your standpoint, you describe that particular situation as far as the Government is concerned, with approval? It helps you?

A. That is right. From my standpoint it is as it should be. The American Government is a shipper. We are operators of American tonnage. We have a right to participate in that business.

Q. And you do?

A. And we do. Now, we have exactly the same right to [fol. 898] participate in the shipments of other American shippers, and this contract system seeks to prevent our having that access.

Mr. Galland: That is all

Redirect examination.

By Mr. Hupper:

Q. Mr. Crinkley, the fact that I don't ask you questions in respect of various legal conclusions you brought forward yesterday, doesn't mean I agree with same. I avoid further questioning on those items in the interest of expedition.

I bring myself to this matter of difference in cost between foreign ships and American ships, and I understood you to say that the cost of American ships as bought from our Government here under the 1946 Ship Sales Act, was not in excess of the cost of ships built abroad.

A. All during this present period of time, that is true.

Q. Do you know what building costs here are now approximately in relation to foreign building costs?

A. I am sorry that I am not able to say exactly the comparison between domestic and foreign building costs.

Q. The domestic is very considerable more, isn't it, than the foreign?

A. Yes, sir. I don't understand that question has been of ordinary importance for the reason that our Government has had quite a supply of ships for sale, and the American [fol. 899] accordingly has not found necessary to place orders for building, but has secured his requirements from the Government.

Q. Well, you know, don't you, that there aren't any more C-3's or C-2's for sale by the United States Government?

A. I understand they are about sold. They are about all sold.

Q. They only had comparatively few of them anyway, didn't they?

A. Well, the C-type, the C-3, C-2, C-1 and Victory—they had quite a supply of them.

Q. The Victories aren't so eagerly sought as the C-type, are they?

A. I don't believe they are.

Q. The same is true of the Libertys?

A. Of course, the Liberty ship is another thing, too.

Q. The C-3 and the C-2 is the type that is favored by foreign trade?

A. That is correct.

Q. And substantially speaking, they have all been sold out by the United States Government?

A. I believe so. I am not absolutely certain.

Q. How many of the C-type—I think they are mostly C-2—did your company buy?

A. Of the C-type, I believe, Mr. Isbrandtsen testified we [fol. 900] had purchased seven.

Q. And of those there were four C-2's?

A. I believe, I wouldn't be absolutely certain without referring to the records, there were four C-2's and three C-1's.

Q. The C-1 is a smaller ship, considerably?

A. Yes, smaller than the C-2.

Q. About what is the deadweight tonnage of the C-1?

A. The C-1 and C-2 are very close together in deadweight tonnage. The difference is in the cubic capacity.

Q. Well, can you give us a rough comparison as between the two?

A. Yes, sir. The C-1, I believe, has approximately 440,000 cubic feet bale capacity, and the C-2 has 535,000 cubic feet.

Q. How about the deadweight tonnage?

A. I believe the C-2's carry ten thousand and some odd tons, and the C-1's carry ten thousand and some odd tons.

Q. And your company's purchase of those ships, I take it, was on the usual terms applied to American purchasers, that is to say, 25 percent cash and 75 percent balance on mortgage over a period of, say, 15 to 17 years, is that correct?

A. I was not directly concerned with the purchase or [fol. 901] financing of the ships, but I am reasonably certain they were bought on the usual terms.

Q. And what I mentioned were substantially the usual terms, as you understand?

A. I understand in a general way they are. I have not studied that and I am not absolutely certain of the facts.

Q. Now, you heard Mr. Isbrandtsen in his testimony here on Monday refer to rate numbers of ships being built abroad intended to enter the American trade, did you not?

A. Yes, I heard him testify to that effect.

Q. He indicated, did he not, that those ships being built foreign were constructed at a cost so much less than American ships that they would be an important factor in competition of the American trade? Did you get that impression from what he said?

A. No, I don't believe I am quite clear on any testimony he may have given along that particular line. I understood the testimony to mean that while there were no American ships being built, and theoretically the number now in use would probably be the number in use for the immediate future, and on the other hand, a great many foreign owners were building tonnage for American trade, and that there would be more ships competing for American business, and since there would not be more American ships, presumably, and there would be a great many more foreign ships, that [fol. 902] that competition would be bound to be felt.

Q. Did you understand from what Mr. Isbrandtsen said, as I understood, that instead of having more ships in the trade it was desirable that there be a diminution of the number of ships in the trade?

A. I would like to say that——

Q. In other words, the restriction of service?

A. It seems to me that since Mr. Isbrandtsen is coming back on the stand, it would be better to have him clarify his own testimony. However, I understood Mr. Isbrandtsen to mean in the present business conditions there was not very much economic sense in having a far greater number of vessels on a given berth than there was cargo to be moved.

Q. Didn't you get the impression, as I did, that he favored a restriction of the amount of tonnage in a given trade, rather than an extension?

A. No, by no means. I understood him to mean where the economic conditions would allow 10 ships to be used, and there were 20 on berth, somebody was economically at fault.

Examiner Robinson: Did you say at fault, or would they be just foolish?

The Witness: Not very businesslike. I think further, the point is oftentimes there is no restriction we have ever heard of in most of these conferences as to the number of vessels the various members might use. So at times we [fol. 903] have a great many more vessels than the business

requires, but in order to maintain freight rates, the freight rates are inclined to be kept up in an effort to protect a greater number of ships than the trade requires.

However, I would say again that I very much dislike to try to clarify what Mr. Isbrandtsen meant.

By Mr. Hupper:

Q. I will ask you in your own right.

A. In my own opinion, I am willing to express practically anything.

Mr. O'Connor: I will object to some of that.

By Mr. Hupper:

Q. Do you favor the conferences establishing restrictions on the number of sailings?

A. I think I testified before that personally, and I am not speaking for Mr. Isbrandtsen, I don't favor the conference system—p-e-r-i-o-d. But my own opinion there is not necessarily of any great weight.

Q. Oh, I know, but that isn't what I asked you. Assuming the existence of conferences, do you think they ought to restrict the number of sailings?

A. Assuming the existence of conferences it would be my thought that each steamship operator in a given trade there should conduct its business with ordinary common sense and good business judgment.

[fol. 904] Q. But you haven't answered the question. Do you think personally that conferences as such should lay down rules for their members which resulted in restriction of service?

A. Will you read it?

Examiner Robinson: I don't understand.

(The reporter read the question.)

A. I don't see how I can answer that—do I think conferences ought to require their members to lessen the amount of tonnage on a given trade. I don't think the conferences ought to be operating when you come down to it.

Q. Well, if you don't want to answer the question, all right.

A. I don't want to answer questions about what I think conferences should do. I think they should go out of business.

Q. You think they should be abolished?

A. My own personal opinion is they should.

Q. That isn't what Mr. Isbrandtsen said.

A. Possibly not. I said I am speaking for myself. I don't like to speak for him.

Q. Now, during the period of the thirties you were connected with the Isbrandtsen-Moller Company here, were you not?

A. Yes, sir.

Q. And that operation was exclusively by means of Danish flag ships, was it not?

[fol. 905] A. No, sir. In the trans-Atlantic trade Isbrandtsen-Moller chartered the equipment it used, and the record shows possibly more Norwegian ships than Danish—Norwegian, Danish, Swedish, English, Dutch. The truth of the matter is there were no American ships available for charter.

Q. They were all foreign flag ships?

A. Yes, sir.

Q. How many of those ships in that operation were what are familiarly called A. P. Moller ships?

A. I would say that out of an operation that went for 11 years, or about 10½ years, and the first three years of which we had monthly sailings, and the balance twice monthly, I believe the total number of voyages completed with Moller ships would be 10. Isbrandtsen-Moller Company on some occasions chartered one or two small ships owned by Mr. A. P. Moller. There were only two ships we ever used of his, and I think two or three voyages each.

Q. When did the relationship which was the background of the Isbrandtsen-Moller Company terminate?

A. I think it terminated some time very close after the close of the war.

Q. You mean the second World War?

A. Yes, sir. I don't know the date, and I can't testify on it, but it was some time after the war was won against Germany.

[fol. 906] Q. Of course, during the period of the war, the

foreign flag ships that had been used prior to the war, I assume, were used elsewhere than in the trade covered by this docket?

A. I understand all of the ships—practically all of the ships that were in that trade before were commandeered or requisitioned by the Government, and my impression was they were used pretty much all around, some to Europe and other trades.

Mr. O'Connor: By the Government, you mean?

The Witness: By the Government. Naturally, during the war——

By Mr. Hupper:

Q. The United States Government?

A. Allied—UNRA.

Q. Foreign flag ships were generally requisitioned by the government of their flag?

A. I believe they were requisitioned by the government, but my impression is the Allied Maritime Authority did the operation.

Q. Broadly speaking, they were pooled for war operations?

A. Yes, that is what I understand.

Q. They didn't operate in regular commercial trade, that is all I am coming to.

A. I really can't answer to my own knowledge.

[fol. 907] Q. You believe they were not operating in ordinary commercial trade?

A. I am under the impression some were operated in commercial trade by the United States Government. For instance, from North America to South America. But I am not sure.

[fol. 908] Q. Not on the route covered by this docket?

A. My understanding again is—there was no commercial business over there during the war period, and therefore the ships didn't operate in commercial business.

But I think one of the ships, one of the Moller fleet, was sunk between here and Europe by submarine action.

Q. Have you noted in the press, or have you heard otherwise recently, that the Moller interests are proposing to

bring out a very considerable number of cargo ships in the American trades?

A. Yes, I saw that in the paper.

Q. Is it about 60 or about 80?

A. I don't believe I saw that figure. I am not exactly clear, but the chap gave the number of vessels in the present fleet, what it was before the war, and spoke of a rather substantial building program, and that ultimately they would have something like—well, I don't believe I remember the exact figure, some 60 or 70 or 80—something of that kind, a certain number of which would be operated in the American trade. I didn't understand all of them would be, because a number of them, I believe, are tankers.

Q. The Moller interests, so-called, are in one of these Conferences, are they not—Conferences in this trade, I mean?

A. Yes, sir, in the Trans-Atlantic Conference.

[fol. 909] Q. And there are no relations now between Isbrandtsen and Moller, is that right?

A. Not the slightest. No relationship, except very sharp competitors.

Q. Well, to put it another way, Mr. Isbrandtsen and Mr. Moller—they rather agreed to disagree?

A. That is my understanding.

Mr. O'Connor: Mr. Isbrandtsen will be here in a little while. I submit Mr. Crinkley knows very little about it. Why not wait for Mr. Isbrandtsen? He is always very anxious to speak for himself.

Mr. Hupper: All right, I would just as soon ask him about it.

By Mr. Hupper:

Q. You proposed here yesterday, Mr. Crinkley, this exhibit marked Exhibit 9, a document which is entitled "Agreement," and contains certain provisions about the shipment of goods.

A. Yes, sir.

Q. That is dated to relate to the year 1937.

A. Yes—let me see. 1937, yes.

Q. Is this in substantially the same form as the agreements we were talking about here, I think it was on Tuesday,

the 10th, which were indicated to relate to the years 1933, '4 and '5?

A. We used a number of different forms. The one mostly [fol. 910] used was simply a letter of confirmation setting forth—we did find another such contract form. I think I have it. Mr. O'Connor has it, rather.

Q. In substance, does it differ from this?

A. Not in substance. Let me see—let me read this just a moment to refresh my mind on it.

Q. Yes.

A. There are one or two differences. If we can find it, I would just as soon——

Mr. O'Connor: Differences of substance, do you mean?

The Witness: Yes.

Mr. O'Connor: Is this the one you are talking about? This is dated 1935. Is that the form you are talking about?

The Witness: This form also. Do you have copies of that?

Mr. O'Connor: Yes.

The Witness: I should read that.

Examiner Robinson: Off the record.

(Discussion off the record).

[fol. 911] The Witness: As I pointed there, we have never at any time used, or attempted to use, anything that has any relationship whatsoever to what we have been talking about, exclusive patronage contract system.

Mr. Hupper: I think I would like to mark this in evidence.

Mr. O'Connor: All right.

Examiner Robinson: Full evidence?

Mr. Hupper: Yes.

Examiner Robinson: It will be received in evidence as Exhibit No. 11.

(Letter above referred to was marked Exhibit No. 11 and received in evidence.)

By Mr. Hupper:

Q. Mr. Crinkley, this Exhibit 11, representing what appears to be an agreement dated December 19, 1935, is a form additional to Exhibit 9, is it not?

A. Yes.

Q. Are you in a position to say whether these two forms constitute substantially your contract arrangements of this nature?

A. I would say this: These contain the conditions of any contract arrangement we made—pretty well the full conditions. Some of them were in the form of perhaps a more simple letter.

[fol. 912] These were some that happened to be in the Booking Department and were scattered in with other old papers that they dug through.

Q. You are personally satisfied that these two documents, that is, Exhibit 9 and Exhibit 11, contain substantially all the provisions that your people included in agreements of this nature as practiced by the Isbrandtsen-Moller Company during the '30's?

A. It fairly represented that. On one or two occasions there were perhaps some differences. I think I can recite them in the absence of being able to get the files.

Q. Go ahead, if you recall them.

A. Let me see—yes, it is there. If the competition reduced the rates below our rates, that we would either meet that reduced rate or release the shipper to take advantage of it.

The other was some provision that was included in a good many, that if the shipper had a shipment that couldn't be held for our vessels, there was no objection whatsoever to shipping with some other line. And with that, that would be the total of the conditions that are involved in any agreements that we made.

Q. I take it that the contract arrangements that were being solicited by Messrs Vinke in 1939 were made against the background of the provisions in these documents, Ex-[fol. 913] hibits 9 and 11. That is correct, isn't it?

A. Yes, that is correct.

Q. Was I correct in understanding you to say yesterday that you considered this Exhibit 9 an entirely legal and proper form of agreement for a carrier to make?

A. Yes, sir.

Q. Do you say the same about Exhibit 11?

A. Yes, sir, I considered it so.

Q. And you still do, do you?

A. Yes, sir, otherwise we certainly would never have used it.

Q. Well, you haven't yet made any such arrangements since March 1946, have you, as Exhibits 9 and 11?

A. We have not.

Q. You contemplate doing so, I suppose?

A. No, sir, I don't.

Q. It hasn't been discussed yet in your company?

A. No, sir, not at all. If it were discussed, it would be more or less I who would decide on it.

Q. It hasn't been taken up yet?

A. No, sir.

Q. Do you see any reason why the respondent carriers here aren't entitled to use a form of contract that is substantially the same as these Exhibits 9 and 11?

A. I should say this: It cannot be considered except that [fol. 914] the background is understood. I pointed out yesterday, I think, and I point out again today, that even that modest instrument, if you would call it that, was used almost altogether under definite situations that the Conference would not possibly find, and which would have no bearing on the question, and that we would establish a rate requested by the shipper or the exporter, and which he would contend was needed to promote his business; we would agree to that rate, based on his needs, and the needs of my company for revenues, that is, for a cost plus profit rate, and then, when the cargo began to move, the group with their concerted strength would meet and sometimes under-quote that rate, which I said of itself was all right, but tied up with the contract so that after having provided a rate that would induce business, then we were frozen out of it.

Now, under those circumstances, that called for the use of that. I don't think there is any basis for comparison.

And, furthermore, as I say again, the same conditions have not altogether prevailed since the war. The forms there have not been used, and even when they were used, they were used by signing the carrier, not by a group in combination.

Q. Well, you don't suggest, do you, Mr. Crinkley, that

the respondent lines, members of the Conferences, don't make rates designed to help shippers move their cargo to [fol. 915] foreign destinations?

A. No, sir, I wouldn't say that by any reason at all, but I do believe on personal observation and otherwise, generally speaking, when a group is allowed to fix prices there is not the same flexibility, and not always the same consideration given to that.

Q. Yes, but doesn't their competence depend on their doing business?

A. Yes, sir.

Examiner Robinson: We will take a short recess.

(A short recess was taken.)

[fol. 916] Mr. McGovern: Mr. Examiner, before we resume, may I tender into evidence copies of Exhibit 10, which I now have ready for distribution?

Examiner Robinson: Is there any objection?

Mr. Hupper: No objection.

Examiner Robinson: It will be marked Exhibit No. 10.

(Document referred to, previously marked Exhibit 10 for identification was received in evidence.)

By Mr. Hupper:

Q. Mr. Crinkley, am I correct in understanding that an answer you made to my question just shortly before the recess contemplates that you deem it not in order that the respondent carriers, as a group, should enter into contracts of the same general nature and effect as these Exhibits 9 and 11?

Mr. McDowell: Mr. Examiner, may I be heard on that point for a moment?

Examiner Robinson: Yes.

Mr. McDowell: We have been, I realize, rather covering the waterfront in this proceeding and I have not wanted to object; but we have been pulling and hauling on the question of these old agreements which Isbrandtsen's predecessor had with shippers some ten to fifteen years ago, until it almost looks as though we are trying the affairs

[fol. 917] of that company instead of the practices of the respondents.

The point I want to make in that connection is that it seems to me we have been over this ground several times now in examination and cross-examination, without objecting.

I wonder if we could not have some sort of an instruction or a narrowing down here, so that we need not go back through this thing again.

Examiner Robinson: Would you mind reading the question Mr. Hupper put?

(The pending question was read by the reporter.)

A. The answer that I gave before was that I don't think it is proper that a group should be able to use any device, the purpose of which would be to monopolize business on a given trade, and especially to prevent access by an American steamship operator to the business of American shippers.

Examiner Robinson: Mr. McDowell, I understand that you think that the question has been amply answered before; is that it?

Mr. McDowell: I think we have been over it several times, and while I think the whole matter is irrelevant, I think is has been adequately covered.

Examiner Robinson: I think we are all in agreement on that.

[fol. 918] Mr. Hupper: I suggest, Mr. Examiner, I am entitled to examine on these documents which have been only recently put in, and I am approaching the point that has been hinted at here and not very completely analyzed. It is all right for one to do it, but it is not all right for a number of lines to do it; and I want to pursue that point.

Examiner Robinson: I think we all understand what you are driving at.

Mr. Hupper: All right, I want to pursue it and I don't intend to be deflected by anybody. I am entitled to have it in the record.

Mr. O'Connor: He is your witness, you always recall, I hope.

Mr. Hupper: We are happy to have him as a witness, because he knows——

Mr. O'Connor: You offered him, and you vouched for his credibility and veracity.

Mr. Hupper: I know he is a credible person. I know his ideas are good, and I know he will give me the exact answer I expect.

Mr. O'Connor: But you are not satisfied when he gives it to you once; you want it ten times.

Mr. Hupper: That is all right. I am examining with respect to documents that have very recently been put in [fol. 919] and I have to yank out of the back woods.

By Mr. Hupper:

Q. Your proposition, Mr. Crinkley, is that it is all right for one line, by itself, to make contracts of this type, Exhibits 9 and 11, with shippers?

A. I would say it was all right for one line by itself to do a great many things that would be improper for a group to do.

Q. Do you say it is not right for the respondent carriers as a group, and together, to enter into contracts of this type, Exhibits 9 and 11, with the shipper?

A. I don't believe that the group should be allowed, as a group——

Q. To do that?

A. —to do that.

Q. You would agree, I take it, that individually it would be all right for each one of them to do it?

A. I think it would.

Q. And your answer applies to all the members in these two Conferences involved in this Docket No. 684?

A. It does.

Q. Your answer is, in substance, that each one of these respondents could make as many of these contracts as they choose, provided they do it individually?

A. Right.

[fol. 920] Q. With all the shippers in the world?

A. Right.

Q. But you object to their doing it jointly?

A. That is right, as a group.

Q. As a group. You have noted, I take it, that the contract form recites at the base that the respondents are parties individually, have you not?

A. Yes, I have noted that.

Q. But the fact that they do it at the same time in one document is objectionable in your point of view?

A. For the reason that that document recites that the shipper is dealing with a group as a group. The individual shipments that are made, naturally, have to be with the carrier involved; but the arrangement as to the routing of the business is with the group,

Q. Well, the business moves on the routes that are necessary to carry the cargo to destination, doesn't it?

A. On the routes?

Q. Yes.

A. Yes.

Q. And by the carriers that are going at particular times?

A. Yes. All of the carriers in a given route are there to carry the cargo that moves on that route.

Q. What is the real difference, in substance, between your contract setup and the contract setup of the individual [fol. 921] members of the Conferences, in respect to getting cargo to destination at rates agreed on between carriers and shippers?

A. So far as individual booking reservations and transportation contracts for the carriage of a single shipment, there is no difference between the methods of our company and those of other steamship companies. They are all similar.

Q. Isn't it your objection, in a sense, that in the Conferences there are too many people who are ready to make contracts of this nature with shippers?

A. No, sir. My objection is that in that group we have a great many lines with a great deal of power, and they are able to bring sufficient force so that the net result is that with a great majority of exporters where that system is used, we don't have access to that business. We may not get business from a given concern anyhow; they may not like us, or they may not like me; but we should have a chance, we should have access, at least, to the business of any American exporter or importer.

Q. Is it your real objection that there are too many people competing with you?

A. No.

Q. You say it is all right for you to make those contracts, [fol. 922] but you must not have a lot more people making contracts of the same nature providing they happen to be in a Conference?

A. I don't say that. I say that prior to November 1st there were the same number of people competing that there would be after Novemebr 1st. Before November 1st, with those five exceptions, this group was not using any type of contract especially in conjunction with each other, or by agreement; and neither has my company.

Q. Yes, but you say it is all right for your company to use this kind of a contract if it so chooses?

A. I said it was all right for us to use them under the circumstances they were used; and I have gone over that several different times.

Q. You said it is not all right for all these member lines in the Conference to do it?

A. That is exactly what I contend.

Q. I revert to this Exhibit 9. Have you a copy of it right there before you, Mr. Crinkley?

A. Yes.

Q. Will you kindly look at the paragraph there which reads: "The rates of freight amounts to"?

A. Yes, sir.

Q. It says 30 cents, and then it says, "net 15 per cent." [fol. 923] What does that "net 15 per cent" refer to?

A. My recollection is that mostly likely the Conference rate at that time was 30 cents a foot——

Q. A 15 per cent reduction?

A. Yes.

Q. That is, in consideration of this contract?

A. Yes, sir.

Q. And the same description doubtless would apply to the 85 cents below?

A. Yes. That is my recollection. I might say, it is my recollection also—and I am trying to draw on a recollection of something that took place some twelve, fourteen years ago—that the 30 cents a cubic foot less 15 per cent was our

ordinary rate of quotation. The recollection on which I base that assumption is that this man simply wanted protection for a period of time.

Q. And the same general theory applied to Exhibit 11?

A. Yes, sir. Well, let me see. I would have to look at it. I don't know just offhand.

(After inspecting document) No; I think there is a difference there. The rate that is named there was one reached by negotiation and consultation with the shippers involved there.

Q. But that rate was lower than the Conference rate?

A. It may have been. I think it was. I don't know. I [fol. 924] can't answer, for certain.

Q. You don't remember specifically at this moment?

A. No, sir.

Q. But you don't imagine you would have made that agreement without a lower rate than the Conference rate, do you?

A. No, I don't imagine that I would.

Q. Well, it is the basic principle of your company in making rates to make them some percentage below the Conference rates, is it not?

A. By no means.

Q. Didn't you so testify in substance in Docket 512?

A. Let's see now, Docket 512; what was that?

Q. The Levant Case, or the flour case. We can produce the Commission Report.

A. I testified along a totally different line at that time. If you care to, I will repeat the testimony here that I gave there.

Q. You remember it, do you?

Mr. O'Connor: Mr. Examiner, I object to bringing this in. We have got the Far East Conference case here, and all the other cases. I object to bringing in these ancient and hoary cases. Docket 512 is back some time; we are up to 684 now.

The Witness: That 512, I believe, was in 1939 or 1940.

[fol. 925] Examiner Robinson: Read Mr. Hupper's question, will you?

Mr. Hupper: Well, if you don't remember, that is all right with me.

The Witness: I remember that, and that is a vastly different thing from what we are talking about here.

Examiner Robinson: You don't want him to answer it, whether he remembers it or not, is that right?

Mr. O'Connor: That is all right, but I am objecting now to going into it extensively, going into it extensively, that is all. He can answer whether he remembers it and whether it is substantially as Mr. Hupper says.

Examiner Robinson: Read that over.

Mr. Cockrum: I submit, Mr. Examiner, in any event, the record in 512 will speak for itself.

Examiner Robinson: I don't think there is any doubt about that.

Mr. Hupper: We can refer to that record.

Mr. Galland: It will not speak for itself in this case unless it is brought into this case.

(The reporter read the record as required.)

Examiner Robinson: I think it goes, regardless of what the trade is, I think it goes to his general line of carrying on business. I don't know what his answer is going to be, but I think it is conceivable that he would do the same in [fol. 926] one trade as in another. He may or he may not. I merely say that it is conceivable. So there certainly is a relevancy.

Mr. Hupper: I will bring it down to this trade. I can clarify this entire situation now.

By Mr. Hupper:

Q. I hold in my hand a copy of the Commission's Report in Docket 512, which was entitled, "Cartel to Adriatic, Black Sea, and Levant ports," dated July 16, 1940.

In the report of the Commission, it is stated——

Mr. O'Connor: I object, Mr. Examiner. He was asked, "did he so testify in 512?" Now, how can that be picked out of anything in the report as to what he testified?

Examiner Robinson: I think if you want to let him go ahead and answer—he said he remembered what he testified.

After all, that is all he has been asked. So go ahead and testify. You said you remembered.

The Witness: In Docket 512 the question along the lines you speak of Mr. Hupper, was a system, shall we say, of an independent whereby he under-quoted other carriers by a fixed differential, by a percentage.

My testimony was to this effect, that where we find a Conference and they are using the exclusive patronage Conference contract rate system, where the current or going rates are called contract rates, and where a penalty [fol. 927] rate or a non-contract rate is fixed by a set differential, I considered it a fair and reasonable proposition under those circumstances, where the purpose of that contract was to monopolize the trade, that my company should under-quote so-called contract rates by a fixed differential; that if the Conference can, by a fixed differential, set non-contract rates, then it was perfectly all right for me to under-quote the Conference so-called contract rate by a fixed differential. That was my testimony in essence in that case, and I still hold to that view.

Examiner Robinson: And that would be true in any trade?

The Witness: It would be true in any trade. If these groups are allowed to use this system, which I have contended consistently is unlawful and illegal, and we cannot get relief otherwise than to quote by that system of a differential, it is extremely fair and perfectly all right.

By Mr. Hupper:

Q. Is it your recollection that your testimony there was conditioned on the existence of an exclusive contract rate system?

A. It was my recollection that my testimony there was conditioned on that.

Q. I want to read you just part of a paragraph out of the report.

[fol. 928] Mr. O'Connor: I object to that. The report could not possibly have anything to do with the cross-examining of this witness as to whether or not his testimony now is consistent with previous testimony.

Examiner Robinson: I know, but he has already tied it up to say that he feels it is just as good and he would do the same in one trade as another. I don't say he will do it, but he has a right to ask him that.

Mr. O'Connor: I am objecting to the reading of a report——

Examiner Robinson: Well, it is an official report. He can read it if he wants to.

Mr. O'Connor: Well, it has nothing to do with this witness' testimony in that proceeding.

Examiner Robinson: He apparently is going to ask him if such and such is true. I don't know. I have to let him read it. I don't know what he is going to read.

Mr. O'Connor: Well, it has no connection.

Examiner Robinson: But we don't know.

Mr. O'Connor: It could not contain the testimony of the witness.

Examiner Robinson: You don't know whether it does or not. Let us see what he has got to say.

Mr. O'Connor: Then might I look at it first?

Examiner Robinson: All right, go ahead and look at it [fol. 929] first.

Mr. O'Connor: I want to see whether it has the language of the witness or of the Commission.

Mr. Galland: Why don't you let him ask the question; and then you can object after it has been asked.

Mr. Hupper: I am going to read it, and then——

Examiner Robinson: Is this from the report itself?

Mr. Hupper: Yes.

Mr. O'Connor: I object.

Examiner Robinson: Wait until he says what it is. You may not object to it.

Mr. Hupper: You may be very much in favor of it. I think you will be, Brother O'Connor.

Mr. O'Connor: The Commission is not testifying in this case.

Examiner Robinson: You don't know what that says. It may say that Mr. Crinkley said something.

Mr. O'Connor: In the ordinary trial of a case, counsel is entitled to look at a thing so that he can make up his mind whether he will object or not.

Examiner Robinson: It is an official report. It can be referred to whether you want to or not. Let him read it and then you can object if you want to.

Mr. O'Connor: The fact that it is an official report does not give it admission in this case.

[fol. 930] Examiner Robinson: He can make reference to it if he wants, and you cannot stop it.

Mr. O'Connor: Not in the testimony of this case.

Examiner Robinson: He is not testifying; he is reading something.

Mr. O'Connor: He is reading——

Examiner Robinson: Go ahead, Mr. Hupper.

Mr. Hupper: I am reading it to test the witness' recollection.

Mr. O'Connor: As to what he said.

Mr. Hupper: All right, here I go.

By Mr. Hupper:

Q. "It was testified by Isbrandtsen's Vice-President that although there were exceptions——"

Mr. O'Connor: Now, Mr. Examiner, that has been read far enough for me to object right there.

Examiner Robinson: Mr. O'Connor, will you please let Mr. Hupper continue? You have all the right to reserve your objections and make any objection you want to, and it will duly appear, but he is going to read it.

Mr. O'Connor: All right, if that is the case.

Examiner Robinson: Go ahead and read it, Mr. Hupper.

By Mr. Hupper:

Q. "—although there were exceptions, it was the general [fol. 931] policy of the company to quote rates differentially lower by 10 to 15 per cent than the established rates in the trade whenever it met Conference competition.

"It appeared of record that there was no instance in which Isbrandtsen entered a trade wherein they were not confronted with this Conference competition.

"The witness further testified that the one restriction on this general policy was that a rate would not be quoted if it failed to produce a profit. The record is not clear

as to the method used by this company in determining what constitutes profit.

"An examination of exhibits introduced at the hearing substantiates the testimony that Isbrandtsen's rates, as a general rule, were quoted on a percentage basis differentially lower than the rates of other carriers in the trade."

Mr. O'Connor: Now, Mr. Examiner, I move to strike out the question.

Examiner Robinson: Let us find out what he is going to do with the quotation first.

Mr. O'Connor: Well, no——

Examiner Robinson: He has just read something. That is not binding on me, or on you, or on anybody else. Now, we will see what he wants to do with it.

Mr. O'Connor: All right; go ahead.

By Mr. Hupper:

[fol. 932] Q. Would you say, Mr. Crinkley, that that is not a correct summation of the testimony you gave in that case?

A. I don't believe it is a correct summation of the testimony that I gave.

Mr. Hupper: Mr. Examiner, I then reserve the right to produce the record of the hearing out of which this report arose.

Mr. O'Connor: I now move to strike that from the record, on the ground that any interpretation by the Maritime Commission of what this witness said in another proceeding is not the first and best proof of what the witness said.

Examiner Robinson: I quite agree with you, and your witness has already testified in your favor. He says that it is not a fair summation; so you have gained your point.

Mr. O'Connor: I move to strike it physically from the record.

Examiner Robinson: Well, I will not strike it physically.

Mr. O'Connor: Exception.

Mr. Hupper: Here is the report, if you want to see it, Brother O'Connor.

[fol. 933] Mr. O'Connor: I am not disputing what the Commission said. I make the additional point that what

was said by the Commission as to what this complainant did at another time in another trade, back some 10 years or so ago, is not material or relevant in this case.

Examiner Robinson: I am not saying it is, and your witness said he did not say it in the first place. I recognize that. What I tried to get across to you was, he said what Mr. Hupper asked him a while ago, that he feels he would do the same in one trade as another. That is all I can think is relevant.

Mr. O'Connor: When you try to get something across to me, I usually catch it.

Examiner Robinson: I think you got it.

The Witness: I would like to say just one word about my testimony.

This whole thing led off on a question by Mr. Hupper as to whether it was true or not that my company always quoted rates by a percentage under the conference, and I said it was not. Then he asked if that is not what I testified in Docket 512.

Examiner Robinson: And he said no.

The Witness: I pointed out that not only did I not testify to that in 512, but that Docket 512 was heard in 1939. The [fol. 934] company involved was the Isbrandtsen-Moller Company, Incorporated. We are dealing with a question here that concerns itself with post-war operations of about 3 years' duration by the Isbrandtsen Company, Incorporated, in a different trade and under different conditions.

I wanted to point that out.

Examiner Robinson: Surely.

By Mr. Hupper:

Q. Do you recall what was the subject matter of that Docket 512?

A. The subject matter was that the conference had cut rates 75 percent against my company, and they were cited for an unfair trade practice; and during the taking of the testimony concerning that, I was called to testify.

Q. Are you sure about your recollection in that?

A. I am sure about it, because I——

Q. Do you remember that I was one of the counsel in that case?

A. Yes, sir, I very certainly do. I was examined rather extensively by you in that hearing. The rate on flour, which had been 40 cents by the conference, and my company quoted 36 cents, was cut by the conference lines 10 cents a hundred pounds from New York to eastern Mediterranean ports, and on no complaint of ours, but on its own motion, the Commission set up a hearing to determine the truth of that [fol. 935] situation and to judge whether it was an unfair trade practice or not.

Q. Well, isn't that——

A. There was no complaint filed by the conference nor by any company; it was a hearing on motion by the Commission.

Q. Didn't that case also involve the point that payment of commission by common carriers to agents who were also shippers was a violation of law?

A. Yes, sir, it involved that point, and I pointed out at the time that practically every line in the business including the Commission's own line, followed that system.

Examiner Robinson: What is the purpose of that, Mr. Hupper?

Mr. Hupper: He said his recollection was very clear as to what the case involved, and I don't find in the case anywhere the point that he last mentioned, and I am testing his recollection about it.

Mr. McGovern: May I suggest, Mr. Examiner, that the witness has said his recollection was very clear. Now, we acknowledge the fact that this witness might well be an adverse witness to Mr. Hupper's point of view. Under the rules, he is entitled to examine and cross-examine; but no lawyer at any time can contradict his own witness, even if he is an adverse witness. The witness has said his recollection is clear. That is the end of it.

[fol. 936] Examiner Robinson: I agree with you.

Mr. Hupper: Nobody ends a point by saying his recollection is clear, when I have the documents to show the contrary; and I am not taking my law from any other sources.

Mr. McGovern: Well, that is the practice in any court of law in the United States that I have ever been in.

Mr. Hupper: You are in a court now that you don't know much about, if that is so.

Mr. McGovern: I must admit I don't know anything about it.

Mr. Hupper: The point in this case was the drastic reduction in the rate on flour, and so forth, found to be detrimental to the United States, according to the report. I am talking about your reduction on flour, Mr. Crinkley.

The Witness: I absolutely deny that. That reduction of rate was put into effect by the conference before my company filled a single ship, and every bit of my testimony in there will bear me out on that.

By Mr. Hupper:

Q. Coming now to the present day, after all I deem to be a near continuation of facts, being that the principles of commerce are unchangeable, I want to ask you whether the rates which your company makes now, rates now in effect, [fol. 937] according to the tariff which I understand you have on file with the Maritime Commission, whether you have not made those rates fairly consistently lower than the rates charged by the conference lines?

A. Mr. Hupper, at this time, my company is in competition with the conference and other independent carriers, and our rates have been made, as I have testified to before, on the basis of many factors, one of which is the competitive rate quoted by others in the trade.

Q. Yes, but you are not presently suffering the competition of the contract rate system, are you?

A. No, sir, we're not; we are suffering the competition, if you call it suffering, of the conference lines and other independents.

Q. And it is the regular policy of your company to charge rates lower than those of conference lines?

A. Well, we have answered that——

Mr. O'Connor: Ten times, by saying, "Not necessarily."

A. —several times, by saying, "Not necessarily."

By Mr. Hupper:

Q. All right, how about actually?

A. Actually, my rates for instance, on a very important item of cargo, namely, leaf tobacco, is the same as the [fol. 938] conference.

Q. I ask you, whether or not on about 528 important items, your rates are substantially below those of the conference lines?

A. I think there is a substantial number of them might well be below the conference lines. Without referring to my tariffs, now, I don't believe I can give any nearer estimate than that.

Q. You would not deny that it is about 528, would you?

A. I am awfully sorry that I can't confirm that figure.

Q. Well, about?

A. I don't believe I can do it, without reference to my records.

Q. Well, you do know there is a very substantial number?

A. A substantial number.

Mr. Cockrum: Mr. Examiner, may I object to the further pursuance of the question? The witness has answered it here within the last five minutes three or four times already.

Mr. Hupper: I am glad to have you amplify that.

Examiner Robinson: I think it is a lot of repetition, myself.

Mr. Hupper: All right. I intend this record to be overflowing with this point. We are talking about competition, and I am going to have it so clear that nobody can deny [fol. 939] it.

Mr. O'Connor: Well, Mr. Examiner, aren't you controlling the record?

Examiner Robinson: I certainly am, and if necessary, I will do what the Dutch boy did: I will put my finger in the hole in the dyke.

Mr. Hupper: All right, it is quite obvious that my good friends don't like to have this point brought out. A little later I shall be able to put on a witness myself to cover it specifically, but I wanted to know whether, as a matter of principle, the complainant here did not regularly make a practice—I don't say there is any sin or crime in it, but getting at the facts—to quote lower rates. That is the way he gets his business.

I am not objecting to that; I am objecting to the fact that an attack has been made on the conference lines here because the complainant thinks they are free to do certain things with respect to a contract but nobody else is.

Mr. O'Connor: Oh, no; the Isbrandtsen Company——

Mr. Hupper: The complainant wants to play the tune and have everybody dance along in line, that is what it amounts to.

Examiner Robinson: I don't think we have to go into it any further. I think the record is completely clear on this. [fol. 940] Mr. Hupper: I am glad to have you say that. I intended it to be, and I think I helped to bring it to a point by reference to these documents.

Examiner Robinson: I think it is clear.

By Mr. Hupper:

Q. Mr. Crinkley, as a part of the competition of the complainant, does your company give special facilities from time to time to shippers over your lines?

A. Special facilities?

Q. Yes.

A. I reckon you will have to clarify that a bit, Mr. Hupper.

Q. Well, do you give the shippers free warehouse space?

A. Not as a rule. I don't think we give them any except to accumulate cargo for our sailings.

Examiner Robinson: But again, Mr. Hupper, I want to ask what is the relevancy of that?

Mr. Hupper: I am coming to various details of competition. I am talking about competition between the carriers, and I want to know whether the complainant gives special facilities that other carriers do not, in order to get business in addition to the freight?

The Witness: I did not complete my answer.

[fol. 941] Mr. O'Connor: I don't see that if that were proven as the fact, what relevancy that has to the validity or the use of this exclusive patronage contract system.

Examiner Robinson: Frankly, I don't either, and that is what I am trying to find out.

The Witness: I did not make a complete answer. If you are going to leave the question stand, I would like to co*k*plete it.

Mr. O'Connor: Well, don't answer when we make an objection.

Mr. Cockrum: Mr. Examiner, I am going to pose an objection to the question.

Examiner Robinson: I will sustain it unless counsel can show me more than he has so far.

By Mr. Hupper:

Q. Well, your answer was you did not, wasn't it?

A. I did not, did not give any special storage facilities to shippers.

Q. I ask you another question——

Mr. Cockrum: I move that the answer be stricken, Mr. Examiner.

Examiner Robinson: It will be stricken.

Mr. Hupper: You don't strike anything out of the record. Maybe a statement can be stricken, but——

Examiner Robinson: Well, he should not have answered. [fol. 942] Q. Does your company also act as forwarding agents from time to time?

A. No, sir.

Mr. O'Connor: Mr. Crinkley, now, if you will allow a little hiatus between the question and your answer, please, so as to give counsel a chance to insert an objection.

Examiner Robinson: You are right. That is why I said he had to strike it out, because he answered it when he should not have.

The Witness: I don't know what "hiatus" means.

Examiner Robinson: Gap.

Mr. O'Connor: It is a fancy word for a hole in the dike.

(Discussion off the record.)

Mr. Hupper: Mr. Examiner, the translations from the Dutch of those Vinke circular letters have not yet been completed, but I don't think I will need any identification especially from Mr. Crinkley on them.

Examiner Robinson: You have them identified as Exhibit 5-A, B, C, and D.

Mr. Hupper: Well, all right. I can put them in when I get the translations.

I am through with Mr. Crinkley.

Mr. O'Connor: I have just two questions.

[fol. 943] Recross-examination.

By Mr. O'Connor:

Q. Mr. Crinkley, you said something a little while ago about, in the number of shipments over a period of time, of the ships used in that trade, ten of them were Moller ships.

A. No, I didn't say that. The question related itself to our use of Moller ships in the pre-war period in the North Atlantic trade, and I said my recollection was that we had only used two Moller ships, which we chartered from the Moller Company, and that those two ships probably performed, between them, possibly about ten voyages, but only two ships.

Q. I wanted to get this: Ten voyages out of how many voyages?

A. Let me make a rough calculation there. Let's see, about 225 to 250, roughly.

Q. You were asked in reference to this form of contract, Exhibits 9 and 11, which you- company had used back in the '30's, whether or not it had been taken up with your company, the matter of using this contract again. Do you recall?

A. I recall, and I testified no.

Q. Has there been any discussion or mention of such a matter in your company?

[fol. 944] A. No.

Mr. O'Connor: That is all.

Examiner Robinson: Are there any farther questions of Mr. Crinkley?

(No response.)

Examiner Robinson: You are excused.

(Witness excused.)

Mr. O'Connor: All right, Mr. Isbrandtsen, I think you are expected to resume the stand. I think you are still under examination by the parties that called you.

Are you ready for Mr. Isbrandtsen?

Mr. Hupper: Yes. Did you finish with him?

Mr. O'Connor: With Mr. Crinkley?

Mr. Hupper: With Mr. Isbrandtsen.

Examiner Robinson: I don't — he started on him yet.

Mr. O'Connor: No; I am waiting. You called him.

Mr. Galland: I think I had the witness.

Mr. Hupper: I had finished and Mr. Galland had him.

Mr. O'Connor: I see.

Examiner Robinson: Will you come over here, Mr. Isbrandtsen?

Hans Isbrandtsen resumed the stand.

Cross-examination (continued).

[fol. 945] By Mr. Galland:

Q. Mr. Isbrandtsen, I think Mr. Hupper asked you how you make a rate, and I think your answer was, you put a price tag on your service just as Macy's does; is that what you said?

A. Substantially so, I believe.

Q. How do your competitors make their rates, do you know?

A. You will have to ask them.

Q. Those of your competitors who are under United States registry operate, I assume, under approximately the set of costs as those that govern your operation of United States flag ships, is that right?

A. Nearly so, I expect.

Q. Those of your competitors who do not operate United States flag vessels operate under a somewhat different set of costs, is that not correct?

A. That is right.

Q. And foreign flag costs of operation are lower, is that right?

A. In most cases.

Q. While you were on the stand on direct examination, there was some reference to the competition between Macy's and Wanamaker's, or Macy's and Bloomingdale's, and to the competition between yourself and your competitors.

Would you think that normal competition as we know it [fol. 946] between Macy's and Wanamaker's would operate as successfully as it does if Macy's operated at one set of

cost levels and Wanamaker's operated at a much lower set of cost levels; would you expect in a completely free market, would you expect Macy's to be able to stay in business on that basis?

A. Well, I don't quite see your question.

Q. Well, I am trying to stick to the comparison which I think you yourself drew. I want to find out whether there isn't a distinction between competitors who operate under substantially the same circumstances as to cost of doing business and competition between competitors who operate under different circumstances, as to cost of doing business?

A. I still don't get your question. What is it you are driving at?

Q. Do you feel that you, as a United States flag operator, can operate successfully for an indefinite time under circumstances of unrestricted competition between yourselves and foreign flag operators, assuming that the foreign flag operators have sufficient capacity to carry all, or substantially all of the traffic moving in the trade?

A. Well, aren't we? Aren't we competing now?

Q. Well, I will ask you, under present circumstances, do your foreign flag competitors have enough capacity to move all traffic?

[fol. 947] A. Oh, that isn't the whole story.

Q. I know it is not the whole story, but it is the whole question.

A. Well, that is a very large question. There's hardly two ships sailing on the seas that are equal in cost; and that situation has been as long as the 45 years I have been in business.

Mr. Galland: Would you read me back that answer?

(The reporter read the answer.)

By Mr. Galland:

Q. You are referring to the characteristics of the ship in giving that answer, is that not right?

A. I am referring to ships.

Mr. O'Connor: Referring to cost of operation, aren't you?

The Witness: Cost of operation of ships, the know-how and many other factors that go into it.

By Mr. Galland:

Q. Competition in the trade routes covered by this case is not on an entirely free basis at the present time, is it? That is, you don't have the lines in unrestricted competition with each other; certainly as to the Conference lines that isn't true, is it?

A. Well, we are here talking about an exclusive Conference contract; that is one restriction.

[fol. 948] Q. And the effect of the operations of the Conference is to keep the rates at a level agreed upon between all the members of the Conference, as far as Conference rates are concerned?

A. I don't know what their objects are.

Q. Well, I said the effect. Would the answer be the same?

A. I presume so.

Q. You testified under examination by Mr. Hupper that you did not care what the Conferences did, that their operations were of no concern to you; is that correct?

A. Nearly correct, yes.

Q. Nearly correct. You mean you don't care much what they do?

A. Well, we care to this extent: We are here in Court now to determine whether they are within the law or not. I care to that extent. If they operate within the law, I do not care what they do.

Q. Do you disagree with Mr. Crinkley, who stated that the level of Conference rates was one of the important factors to be taken into account by the Isbrandtsen Company in making its rates?

A. I do not know what Mr. Crinkley testified.

Q. Well, assuming I have given you a fair summary as to what he did testify, do you agree or not agree that that is correct?

[fol. 949] A. So far as I know, our policy is not to use the Conference as a standard. We have our own standard. We are not operating at a loss. We will not operate at a loss.

Q. And if you should be confronted with a situation in

which you could not get the traffic except at rates which did result in a loss, what then?

A. We will cross that bridge when we come to it.

Q. Do you concede that your ability to move traffic at compensatory rates depends principally upon these two factors: The amount of traffic and the amount of capacity available to carry it in a particular trade?

The Witness: Repeat the question, please.

(The pending question was read by the reporter.)

A. Not necessarily.

Q. Why not?

A. We might have certain traffic that will go with us, irrespective of the total moving.

Q. Taking it by and large, aren't those the most important factors to take into account in the shipping business?

A. They are important.

Q. Aren't they the most important?

A. Oh, I wouldn't put it by degrees. They are important. Supply and demand is always important, naturally.

Q. When a shipper is solicited for traffic by Isbrandtsen Company, do you think that the shipper, before deciding [fol. 950] whether to book with your company, takes into account the kind of deal he can get from your competitor?

A. Some of them do; some of them don't.

Q. Do you think there is any shipper that does not at least size up the situation as to what his alternatives are before he books space with Isbrandtsen?

Examiner Robinson: That is kind of problematical. Do you think he would know?

A. Your questions are very abstract for a practical steamship man; but we have shippers who have shipped with us for years on end and who will hardly ship with anyone else if we have a boat available, and there are shippers who would not ship with us.

By Mr. Galland:

Q. Well, I have no doubt that that is true, but do you suppose that those shippers ship with you without regard to the competitive situation in the trade?

A. Every shipper naturally takes the competitive situation in mind. He does not give money away unnecessarily.

Q. All right. That is what I am trying to find out. You certainly do keep the competitive situation in mind, isn't that correct?

A. Certainly. I believe I testified to that earlier.

Q. And whatever the competitive situation might be at any time, and in whatever respect it might change in the [fol. 951] future, you would certainly be bound to keep it in mind under all circumstances, at all times, isn't that correct?

A. I believe every company has to consider that, every commercial company.

Q. And to the extent that your competition depends on what the Conference does, it most certainly is a fact, is it not, that you are interested——

A. Certainly.

Q. —in what the Conference does?

A. That is one of the factors.

Q. And in what the Conference rates are?

A. That is one of the factors.

Q. You were present, I think, when Mr. Crinkley testified that the use of the contracts with shippers of the type represented by Exhibit 9 in evidence, which is this document, has not been discussed in the company since the termination of World War II, is that correct?

A. I couldn't say when it was last discussed.

Q. It is not a matter which is currently under consideration in the company, is that right?

A. I don't believe so, no. (Inspecting document). It is quite an old matter.

Q. What are the considerations which make you now believe that that contract is not useful or necessary in your business, whereas you formerly thought it was a useful thing?

[fol. 952] A. My answer still stands. I don't believe the subject has been under consideration here for some little time, that I can remember.

Q. While those contracts were used did you find them effective?

A. I have no recollection of it. I believe Mr. Crinkley

made certain contracts some ten or twelve years ago; but what the effect of those contracts was, I can't testify to now.

Q. You took no personal part in determining the former contents of those contracts, is that right?

A. Well, I will put it this way: When I testified here the other day, I did not have in mind that Crinkley would be over here; but since he has been over here, I believe he is fully competent to answer for the company all of these traffic matters, and it has been the policy all along in our company for me to delegate to him as much as possible of it.

Q. Has one of your reasons for not using these contracts at the present time been that they look so much like the contracts that you are attacking in this proceeding?

A. Well, I think my answer still stands as I made it before, that the subject was not being considered, has not been considered for some time. I can't even remember when it was considered.

[fol. 953] Q. My question was, why not?

A. I can't answer you. I don't know even when the subject was up last. It certainly must be many years ago it was up last. It was not up during the war, hasn't been up after.

Q. Do you think that if it were not for the Conference system in these trades that are under discussion here, United States flag carriers would be able to meet foreign competition on the foreigners' own terms, and at their own rate level?

A. I believe we can take care of ourselves over here now.

Examiner Robinson: Are you speaking of your own company, or of American lines in general?

The witness: The question was a general one.

Mr. Galland: That was a general question.

By Mr. Galland:

Q. I will be glad to follow the Examiner's cue and ask you about your own line.

A. We will always be able to take care of ourselves in my company.

Mr. O'Connor: I understood your answer was that all American lines, you felt, could take care of themselves.

The Witness: Somehow.

Mr. Galland: His second answer was not inconsistent with his first.

By Mr. Galland:

[fol. 954] Q. Why do you think you would be able to take care of yourself in competition with foreign lines operating at lower costs?

A. Because we don't intend to go out of the business.

Q. But neither do you intend to remain in the business at a loss?

A. That is right.

Q. So your answer means that you think that no matter what the foreign lines do, your line at least will be able to make a go of it at a profit; is that right?

A. I didn't say at a profit. I said, we will meet the situation; we will cross the bridge when we come to it.

Q. Well, I am coupling that statement up with your testimony that you don't intend to operate at a loss.

A. Well, sir, I don't have any glass ball; I don't intend to look into the future. It would be very nice if I could forecast the future, what will happen commercially to our trade or our shipping trade, but——

Q. Are you against the whole Conference system, as such, to the extent that Mr. Crinkley is?

A. I don't know the extent to which he is against it.

Q. Mr. Crinkley testified yesterday that he thought all Conferences ought to be run out of business.

Mr. O'Connor: Well, that is very colloquial, Third Avenue way of putting it, but that is not just exactly what he did say.

[fol. 955] A. If Mr. Crinkley testified to that, apparently that is what he meant.

Q. Now, do you think the same thing?

A. Are you asking me?

Q. Yes.

A. I say that with some of the methods used that have come under my observation from time to time, they should

not be allowed to do business in this country.

Q. With some of the methods used?

A. Yes.

Q. And you are thinking particularly of the tie-up with the shipper?

A. The exclusive contract system; that should not be used in this country.

Examiner Robinson: Suppose we adjourn until two o'clock.

(Whereupon, at 12:30 p. m., a recess was taken until 2:00 p. m.)

[fol. 956] Afternoon Session

Examiner Robinson: Mr. Hupper, would you like to go ahead while we are waiting for Mr. Galland?

Hans Isbrandtsen resumed the stand.

Redirect examination.

By Mr. Hupper:

Q. Mr. Isbrandtsen, have you seen these two documents which are marked Exhibits 9 and 11?

A. Yes, I have seen them.

Q. How recently?

A. Well, I have seen them here.

Q. Do you recall having before seen the originals of them?

A. No, I don't recall them. I probably have seen them, but I don't recall them.

Q. Exhibit 9 is a document dated Rotterdam, November 17, 1936, and it purports to be between Messrs. Vinke and Company, as agents for Isbrandtsen-Moller Company, Incorporated, and a concern that is located at The Hague. Do you know whether that document, Exhibit 9, was prepared in this country and sent over to Vinke?

A. I wouldn't know.

Q. Have you familiarized yourself with the provisions of [fol. 957] those two documents, Exhibit 9 and Exhibit 11, and if you haven't, will you kindly glance through them?

A. (The witness complies.)

Q. You have done that, have you?

A. Yes, sir.

Q. Speaking from the point of view of your company, would you have any objection to the conferences lines making contracts with shippers in the form of either one of these two exhibits, Exhibit 9 or Exhibit 11?

A. Not if it was within the law for the conference lines to do so.

Q. Well, I don't want to ask you questions about the law. Just assume that it is lawful. The question of law has to be dealt with somewhere else. And if you can assume that those are lawful contracts for your company to make, or for Isbrandtsen-Moller Company to have made, then will you tell us your view as to whether you would object to the conference lines making a similar contract form?

A. If they are lawful for the conference—if it is lawful for the conference to make these contracts, I don't see any effect, or any objection I would have.

Q. Well, can't you take my assumption that they are lawful as concerns your company?

A. As concerns our company?

Q. Yes.

[fol. 958] A. I believe they are lawful for our company.

Q. Now, if they are lawful for your company, would you object to the conference lines making contracts with shippers in substantially the same form as these?

A. Not if that would be lawful for the conference to do that.

Q. Well, you say you agree they are lawful for your company?

A. I presume they are lawful for our company.

Q. Well, you would have no objection if they are lawful for your company, to the conference lines also making them?

A. That doesn't follow. There is one law for an independent, and there is another law for a group.

Q. You contend that?

A. I always have.

Q. You say what is lawful for you to do is not lawful for the conference lines to do?

A. Generally so, yes.

Q. Well, on what basis do you make that answer?

Mr. O'Connor: Now you are asking about the law.

A. We come in contact with that every so often. A group can do certain things under certain supervision, and an independent can act as an independent. Presumably there are things an independent can do that a group cannot do. Isn't that pretty fairly agreed to?

[fol. 959] By Mr. Hupper:

Q. Well, I hadn't been aware of it before you told me. These conferences are under the supervision of the Maritime Commission, are they not?

A. Yes.

Q. They are formed under the Shipping Act of 1916?

A. That is right.

Q. What I want to know is—I want you to be certain of what my question means before you answer it. Do you contend that the members of the conferences are under a disability with respect of making a contract in the form of the Exhibits 9 and 11 that your company is not under? In other words, if it is legal for your company, why, in your opinion, isn't it legal for the conference members?

A. Well, I believe it is a matter of law. I am not contending what the conferences can do or what they cannot do.

Q. You are not satisfied to have them do it, put it that way?

A. I wouldn't put it that way. I haven't put it any way. I haven't considered the matter. I haven't taken a position here.

Q. I wish you would. You are the complainant.

A. I seldom do things in haste. I don't have to.

Q. You have been working on this matter for some years.

A. Have you been making contracts individually as con-[fol. 960] ference lines?

Q. No, but you have been talking about contracts in the Journal of Commerce a good many years now.

A. Yes, but this is a new question you are putting, or I have not understood it.

Q. Apparently Isbrandtsen-Moller were making con-

tracts pretty regularly in the thirties in this form, that is, Exhibits 9 and 11?

A. Yes.

Q. Now, you agree with me that that form of contract is legal for your company?

A. I believe so, yes.

Q. All right. Then I ask you why, if it is legal for your company, it is not, in your opinion, legal for the conference lines?

A. Well, you certainly would be so much more competent to answer that than I would be.

Q. I won't badger you any more. If you don't answer my question I will not ask it again.

A. I have not considered that matter.

Q. All right.

A. I cannot answer yes or no to something I haven't taken a decision.

Q. I just want to know if you consider that your line, an independent, pretty impersonal independent, has a right [fol. 961] with respect to contracting that other lines don't have?

A. I believe when you act in conjunction with one another that you — are certain restrictions that we are not under.

Q. The acting in conjunction with one another is under the Shipping Act of 1916?

A. Yes.

Q. And approved conference agreements?

A. Could be.

Q. And you are saying that that creates a disability on the lines that are in the conference, a disability that doesn't operate against you?

A. Generally so, yes.

Q. In other words, you say that you, as an independent competitor, have rights that other lines which choose to go into a conference do not have, in the sense of competition?

A. You place yourself under certain restrictions—you place yourself under certain restrictions by going in cahoots, may I say, with one another, that apparently are entirely voluntary on your part, and you must best know what you can do in such companies.

Q. Well, I am trying to get an answer from you?

A. I know it.

Q. As to whether you object to it, and you won't tell me.

A. Well, I have not taken a position on that. The question hasn't been before us.

[fol. 962] Mr. Hupper: That is all.

Examiner Robinson: All right, Mr. Galland.

Cross-examination (Continued).

By Mr. Galland:

Q. Just before the noon recess, Mr. Isbrandtsen, you were saying that some of the conference practices being what they are, it would be better if the conferences went out of business, and I think you said the exclusive patronage contract arrangement was one of those practices, is that right?

A. I think that was it, yes.

Q. Are there any others?

Examiner Robinson: I don't think we are interested in any others, Mr. Galland, at this stage. I think we had better confine it.

By Mr. Galland:

Q. Do you feel that the conferences artificially inflate freight rates to levels higher than they would otherwise be if there were no conferences?

A. I suppose sometimes they do.

Q. Do you think that the present level of conference freight rates in this trade is *unscionably* high?

A. I can't answer that offhand. On some items it may be.

[fol. 963] Q. Do your tariffs contain any provisions relative to free warehousing space?

Mr. O'Connor: I think we went into that.

A. I don't believe so.

Mr. Galland: You are quite right, Mr. O'Connor, we did go into this with Mr. Crinkley on the witness stand.

Mr. O'Connor: I have the same objection.

Mr. Galland: I would like the Examiner to reconsider his ruling as to that subject, for the reason that I don't

think that the practices of the conferences can be properly evaluated unless the record shows not only what the competitive practices of the conferences are, but also the competitive practices against which the conferences are seeking to protect themselves.

Mr. O'Connor: We contend the opposite on that. We contend the practice of the conference which is at issue here is the exclusive patronage contract rate system, and all that either the Isbrandtsen Company did, or that anybody else could do, would not alleviate or save the conference members from violating the law. There isn't anything that Isbrandtsen was doing yesterday or today that would save the conference members from the charge of violating the law. When you go outside the conference contract system and bring in other things, and try to prove Isbrandtsen is doing other things, it is so remote it has no per-
[fol. 964] tinency.

Mr. Galland: I wish to be heard. I am about to present a document dated March 28, 1949, which in a technical sense may not be yesterday, but it isn't very long ago. I can't see what the Commission's purpose in directing these hearings could have been unless to show what the various competitive forces are that are involved here, and in which directions they are tugging.

Examiner Robinson: Of course, the Commissioner ordered the hearing because the complaint was filed, and not an investigation.

I will adhere to my ruling. I don't want to get too far afield on this.

Mr. Galland: I respectfully suggest in all earnestness that you can't tell what the propriety is of the exclusive patronage contract system unless you know who it is that the conferences are fighting, or who it is, or what it is that the conferences are seeking to defend themselves against.

Now, without in any way asking that the contents of this document be considered as evidence before it is introduced, I would like to acquaint the examiner with the fact that I have here a paper, in which Isbrandtsen——

Mr. O'Connor: I object to any statement as to what
[fol. 965] is contained in the paper.

Examiner Robinson: It has not gone in. I have already stuck by the ruling. Let's see what he has to say.

Mr. O'Connor: Let the Examiner look at it.

Mr. Galland: All right. The last paragraph of the letter I am interested in, and I am seriously in it for the reasons I have just suggested.

(Mr. Galland gave the document to the Examiner.)

Examiner Robinson: I don't see any reason to change my ruling.

Mr. Galland: All right.

That is all I have of the witness.

Examiner Robinson: Are there any further questions?

Mr. O'Connor: I have a few questions.

Recross-examination.

By Mr. O'Connor:

Q. Mr. Isbrandtsen, in the question of Mr. Crinkley this morning, there was some uncertainty about the number and price of ships which you have bought from the Maritime Commission. Will you clear that up, please?

A. Flying Cloud.

Q. What type is that?

A. C-2. Flying Hour, C-2. Flying Clipper, C-2. Flying Independent, C-1. Flying Enterprise, C-1. Sir John Franklin, C-1. Flying Trader, Victory. Flying Merchant, [fol. 966] Victory. We are just on the point of taking title to the last.

Q. Now, as to the Isbrandtsen-Moller Company, where was that corporation incorporated?

A. The State of New York.

Q. As to its officers and directors, will you state whether or not they were American citizens?

A. Its officers were citizens here, but the directors were —two were American citizens, and one was a Dane.

Q. And you were one of the directors?

A. Yes, sir.

Q. And the other American director was an associate of Mr. Hupper, was he not?

A. With the firm of Burlingham, Veeder, Clark and Hupper.

Mr. Hupper: Whom are you referring to?

The Witness: Mr. Henry Field.

Mr. Hupper: He is now deceased?

The Witness: He is now deceased.

Mr. Hupper: I will say this is my first knowledge of it.

The Witness: Let me say here that I believe we received your permission at the time, but Mr. Henry Field simply attended to all corporation matters, and such, in his professional capacity.

[fol. 967] Mr. Hupper: He attended to some——

The Witness: Yes. Well, he did it all.

Mr. Hupper: He was in the employ of your company?

The Witness: For the company.

By Mr. O'Connor:

Q. When Mr. Hupper said this afternoon in his question to you that you were pretty near a professional independent, did you understand what he meant by that—"professional"?

A. Well, he might have meant confirmed independent.

Q. Don't you think sometimes you are an amateur, still?

A. Well, no. I think I passed that stage.

Q. Reference has been made here to advertisements in the Journal of Commerce which you have inserted, and which I imagine paid for, and also references have been made in the examination of yourself and Mr. Crinkley as to your policy in reference to the matters here under discussion. Now, I show you a paper being an ad in the Journal of Commerce of 1934, and ask you if that contains a statement of your policy substantially in reference to this matter, as of this time?

Mr. Galland: Before he answers, I would like to see the paper.

By Mr. O'Connor:

Q. Again I am going to ask you whether it represents your policy as of now, substantially.

Mr. O'Connor: Will you read the question.

[fol. 968] (The reporter read the question.)

By Mr. O'Connor:

Q. Does it—the statement?
A. Yes.
Q. Is that substantially your policy as of this time?
A. Substantially so.
Q. Will you please read it into the record?

Examiner Robinson: I don't think it needs to be read into the record. Can't you incorporate it? I don't see the point. Is there any objection to it? I am not trying to dictate your case——

Mr. Hupper: I think I object to it on the ground of expedition. We all know what Brother Isbrandtsen thinks. We all know.

The Witness: You asked me so many questions I doubt sometimes if you know what I think.

Mr. Hupper: I would like to have you emphasize what you have in mind.

Mr. McDowell: Mr. Examiner, it seems to me, to a very large extent, this examination, both of Mr. Crinkley and Mr. Isbrandtsen, has been conducted somewhat on the basis of their views and their policies, of their company, with respect to this thing, and it has been rather piecemeal. Apparently there is a view here on the part of counsel for the respondent, and perhaps of the Maritime Commission, judging by the questioning, that the question at issue [fol. 969] here as to whether or not the respondents are violating the Shipping Act, may in some way be resolved by reference to the policies and views of the complainant, the Isbrandtsen Company, and his predecessor, Isbrandtsen-Moller Company.

Now, I disagree with that view. I don't think that any of this material that has gone in on this matter has been relevant. But I think that we do have a question of fairness here. I think these witnesses have been picked and pulled to pieces as to their policy, and there has been a lot of reflection and a piecemeal approach to parts of their policy. I think it would be fair to have the part of it which sets forth comprehensively the actual policy of the

company, then and now, put together consistently in one place in the record.

Mr. Galland: Nobody complained about it going in the record. It is just a question of whether it is to be copied in in purple ink, or whether it will be included as an exhibit in black ink.

Examiner Robinson: As far as I am concerned, there is no question as to the good faith of the complainant in bringing the action. I am trying to keep from reading all of this, if it can be put in in exhibit form.

Mr. O'Connor: If we put it in in excerpt form, it doesn't [fol. 970] meet the point we have in mind, or that Mr. McDowell, of the Department of Justice, has in mind. If you are not permitting it to be read, then it should be incorporated bodily into the record at this point.

Examiner Robinson: That is all right.

Mr. O'Connor: All right. I ask that it be incorporated in the record at this point.

Mr. Hupper: That is all right.

Mr. O'Connor: All right. I ask that it be incorporated in the record at this time.

Mr. Hupper: I take it even if it is an exhibit it has to be copied, and the people who are buying the transcript have to pay for it.

Mr. Galland: No.

Mr. Hupper: I object to it then. We have heard about it for years, and there is nothing that everybody connected with the shipping industry fails to know. I suggest that it be marked only as an exhibit and that it be made available to everybody.

Mr. O'Connor: I don't believe that it is fitting, in view of the situation.

Examiner Robinson: I think the record is sufficiently large to justify putting in a couple more pages.

It will be copied in at this point.

[fol. 971] (The advertisement follows:)

Reprinted from the Journal of Commerce, New York Monday, June 25, 1934.

To the Shipping Public:

The investigation which the Shipping Board has been conducting at the Hotel Commodore seems to have developed largely into a concerted attack upon this company by our competitors. As neither this company nor any of the ships we employ is the beneficiary of any government subsidies or mail contracts, we have neither time nor money to engage in this protracted controversy, which has already lasted for weeks and has involved the examination of a great number of witnesses in New Orleans and on the Pacific Coast as well as in New York. We, therefore, take this means of answering a few of the misleading statements which have been made about us, and advising our friends of the true facts.

Perhaps the most misleading feature of the testimony given at the Hotel Commodore was the effort to give the investigation a national or patriotic aspect. We have been referred to as a "Danish company" which operates with foreign chartered vessels. Incidentally, this company is a New York Corporation, but we mention this fact merely in passing, and do not consider it important. The important fact is that the Conference Lines who attack us are mostly foreign lines. In almost all of the Conferences a majority of the lines, both in number and tonnage, are [fol. 972] foreign. This shows the absurdity of suggesting that there is any national interest in stabilizing freight rates at a high level. Such a course would merely place an additional burden on the foreign trade of this country for the benefit primarily of foreign shipowners. We desire to emphasize that the present investigation is not directed at competition between American and foreign shipowners; the differential in operating costs, owing to the higher living standards in this country, has already been dealt with by postal and other subventions designed to put the American shipowner on a parity with his foreign competitors. The present investigation has to do with the competition between the Conference Lines (largely foreign) and their few independent competitors.

The Conference Lines contend that this competition should be eliminated so that rates can be "stabilized." We recognize the need for stabilization from the standpoint

of some of the Conference Lines, because only in this way can the American exporter be saddled with the cost of maintaining the great surplus of expensive tonnage which some of the Lines were unwise enough to build during a boom period, and which the acute world depression has rendered economically worthless. Whether the American export trade should assume the burden of this tonnage (including an enormous amount of foreign ton-[fol. 973] nage) will be for Congress to decide. It is an economic problem which we shall not discuss here. Within the space available to us we can only state briefly our own position, which we desire to bring to the attention of the friends and patrons of our Line throughout the United States.

1. We believe that a steamship line can only be operated permanently and successfully on the basis of careful, skillful, and economical management.

2. We believe the American shipper is entitled to the cheapest transportation which can be supplied on a sound economical basis. We do not believe that an American export- of machinery, lumber or cotton should have to contribute to the cost of swimming pools and floating night-clubs in which is is not interested. On the contrary, we believe that he should be given the continued opportunity of shipping at a low rate, on vessels which can be operated economically and cheaply.

3. We believe that the problem of surplus tonnage is a problem which rests with the shipowners who made the decision to invest in it, and not with the shipping public.

4. We believe that any shipping monopoly is objectionable; and we are confident that the American public will never tolerate a shipping monopoly largely dominated by foreign lines. Our competitors ask that competition be [fol. 974] regulated; but it is clear from their testimony that what they really seek is to eliminate competition altogether.

5. If rates are "stab-lized" it will mean that the shipping public must pay to all lines the rate at which the least efficient line can be operated; and must pay for the services of a slow vessel of the simplest freighter type a rate at

which a competing line can afford to operate an elaborate and expensive ocean liner.

6. We receive no governmental aids or subvention of any character.

7. Our success is not based upon rate-cutting and we do not operate at a loss. We are able to operate profitably at low rates because of careful planning, conservative methods and efficient operation. It has been our aim to meet the need for simple and economical service and not to force our customers to pay for an extravagant and expensive service which they do not require.

8. We believe that the only solution of the current depression in the shipping business is an increase in international trade. To the extent of our ability we have tried to play our own small part in stimulating foreign trade and we believe that our customers will agree that we have worked with them in seeking out new markets and new channels of trade. We believe that the Conference Lines could employ their great influence to better effect in [fol. 975] trying to increase trade rather than in trying to place additional burdens on the small volume of trade which still exists.

9. We believe that competition is still the life of trade. We do not claim the right of dictating to the shippers how they shall arrange their shipments, or the right to tell our competitors how they shall run their business. We concede them entire freedom of action and claim the same privilege ourselves.

Finally, we solicit inquiries in connection with our economical freight service conducted without frills or fancy equipment, and again call to the attention of the public that we cater particularly to the carrying of American goods which, for transportation reasons, or on account of competition of other exporting countries, have difficulties in finding markets abroad. This policy of ours has found particular favor in view of the unsettled and quick-changing commercial conditions the world over. We expect to continue this policy for the future as in the past.

Isbrandtsen-Moller Co., Inc., 17 Battery Place, New York. To Far East, To the Continent, World Wide Carriers of Freight.

[fol. 976] Examiner Robinson: Go ahead, Mr. O'Connor.

Mr. O'Connor: That is all.

Examiner Robinson: Is there anything further of this witness?

Mr. Hupper: Yes, in view of this.

Redirect examination.

By Mr. Hupper:

Q. Mr. Isbrandtsen, you personally compose the advertising, do you not, for the Journal of Commerce?

A. Most of it.

Q. You composed this document which came out in June 1934?

A. Most of it.

Q. Didn't you compose all of it?

A. Well, I would say most of it.

Q. Well, who helped you compose it?

A. Mr. Englar.

Q. Roger Englar?

A. Yes.

Q. He is now deceased?

A. He is now dead.

Q. Did Mr. Crinkley help you compose it at all?

A. I don't believe so.

Q. And the advertising we have seen in the Journal of Commerce from time to time, beginning in 1934 up to the present time, has been composed principally by you, has it?

[fol. 977] A. That is right.

Q. Do you have a special rate with the Journal of Commerce in view of your very frequent advertising?

A. The same rate as others, I expect.

Q. They are generally on the righthand corner of the page?

A. Yes, sir.

Q. That is especially good space?

A. Is it?

Q. I think it is. Do you think so?

A. Well, it is the space we have.

Examiner Robinson: I don't think that is pertinent. I am going to knock all of that out, where it is located, and whether you had a special rate.

By Mr. Hupper:

Q. What is your purpose in this frequent advertising of your special virtue as an independent carrier?

A. I think it is very pertinent.

Q. Does it get you business?

A. It may get us some business, and may not get us business.

Q. Do you put it in for the purpose of getting business?

A. I put it in because I am in business about the matters I am talking about.

Q. Is that the only purpose?

A. I can say mostly.

[fol. 978] Q. In other words, you blow off steam with respect to the Conference members. That is what you are doing, isn't it?

A. Put it that way.

Q. You talk about cartels and monopolies quite frequently in that advertising, don't you?

A. Yes, I do.

Q. Do you know where the word "cartel" originated?

A. In Europe, I suspect.

Q. Germany?

A. That I wouldn't say.

Q. Did it begin with a "K"?

A. Possibly.

Q. Don't you use the word "cartel" because of the presumably evil connotation that attaches to it because of its having originated in Germany?

A. I wouldn't say that. I wouldn't say that.

Q. Well, do you really contend that the Conferences are cartels?

A. Yes. Why not?

Q. If you were in the Conference, would you say that you were in a cartel?

A. Yes.

Q. Isbrandtsen-Moller was in a Conference, way back, in the Far East?

[fol. 979] A. They were not.

Q. Mr. Moller's ships, some of them, were in the Far East Conference?

A. That is right.

Q. Do you consider those ships being in a cartel?

A. Those ships apparently were in the cartel, yes.

Q. You called that a cartel?

A. I would just as well, yes.

Q. Is your knowledge of a cartel such that you feel justified in saying that if the organization you so describe permits other individuals or carriers to enter the same freely, is it nevertheless a cartel?

A. I would say so.

Q. It makes no difference to you that everybody can come in?

A. It wouldn't make any difference.

Q. Don't you know that one of the characteristics of a cartel is a complete exclusion of any new members coming in?

A. Well, you used to have pretty fair exclusion.

Q. I am talking about the Conference agreements that now exist.

A. That now exist. Well, I understand they are open to all comers, but that certainly has not been the practice over a long period.

Q. All right. We are talking about the present now, these [fol. 980] Conferences that are involved in Docket 684.

A. Yes.

Q. Don't you agree with me that in view of the provisions in those agreements for admission of new members on application, provided they are regularly in the trade, they can no longer properly be described, even by you, as cartels?

A. I believe definitely they can be described as cartels as long as they use the methods they are using.

Q. What methods are you referring to?

A. The exclusive patronage contract.

Q. That is the reason you call them cartels?

A. Yes.

Q. You understand, don't you, that any line coming in to the Conference, thereupon becomes entitled to participation in those contracts?

A. Yes.

Q. You nevertheless call it a cartel?

A. Yes.

Q. Notwithstanding that you participate in the Confer-

ence agreements and in the contracts that the Conference members employ?

A. Notwithstanding that we did?

Q. No. I am talking about a person—I don't want to say your company, because I know you are out, but X Company, we will say, when it comes into the Conference, it is entitled [fol. 981] thereupon to participate in the Conference contracts, the X Company. You nevertheless call it a cartel?

A. It wouldn't make any difference with me.

Q. You still call it a cartel?

A. Yes, for general description.

Q. And you generally intend to keep on describing it that way in your advertising?

A. So long as they run as at present, yes.

Q. I tell you now, you are distorting the word "cartel," and assimilating the Conference to something it is not.

A. Well, you have your opinion. I have my opinion.

Mr. McGovern: May we say on that point, since Mr. Hupper is giving testimony of his own, that there is an official definition by the Supreme Court in the National Lead Company case, and the Supreme Court's definition and Mr. Isbrandtsen's definition agree. I don't know where Mr. Hupper gets his definition.

Mr. Hupper: I suppose they took it from Mr. Isbrandtsen.

Mr. McDowell: I don't think they did. I think if Mr. Hupper reads the definition he will find it is defined as competitors who attempt to eliminate competition from those outside the group.

Mr. Hupper: All right. A cartel, since you describe it as [fol. 982] you would like to have it referred to here, is so different from the Conference that there isn't the slightest justification for using the word.

Mr. O'Connor: If you are going to testify I insist on the right to cross examine.

Mr. Hupper: I will take the stand.

I have no more questions of Mr. Isbrandtsen.

Examiner Robinson: Are there any further questions?

Mr. Galland: I have a few questions.

By Mr. Galland:

Q. What investigation was in progress at the Commodore Hotel which was the subject of this advertisement, Mr. Isbrandtsen?

A. There have been so many that I would have to place this particular one.

Examiner Robinson: Shall we agree it was a Section 19 investigation?

Mr. Hupper: That is right. We agree to it.

By Mr. Galland:

Q. At the time this advertisement was published, your service was provided by the Isbrandtsen-Moller Company, is that right?

A. That is right.

Q. And that was a New York corporation?

[fol. 983] A. That is right.

Q. Operating ships of foreign flag registry, is that right?

A. Yes, sir.

Q. Now, you said in Item 2 of this advertisement, "We do not believe that an American exporter of machinery, lumber or cotton should have to contribute to the cost of swimming pools and floating night clubs in which he is not interested."

Is there any question of swimming pools and floating night clubs in this case?

A. There may not be, and there may be. I believe there is.

Q. Is it your position in this case that the Conference lines are inflating their rates to cover the cost of operation of swimming pools and floating night clubs?

A. There are vessels involved here that are floating hotels, in a way.

Q. They contribute to what you claim to be the inflation of the rate structure in this trade?

A. No, I haven't claimed that.

Q. In the second paragraph, up at the top of this sheet, you say that your company had been referred to as "a Danish Company which operates with foreign chartered vessels." And then you mention that your company is a New York corporation, and you say, "We mention this fact

merely in passing, and do not consider it important." Then [fol. 984] you say, "The important fact is that the Conference lines who attack us are mostly foreign lines."

Was it any more important that they were foreign lines than that your line was then operating foreign flag vessels?

A. I think that is merely a play of words on your part.

Q. On my part?

A. Yes.

Q. Well, they are not my words. I was reading your words.

A. You are asking what is most important, or else I did not understand the question.

Q. "The important fact is that the Conference lines who attack us are mostly foreign lines."

Is there any greater infirmity which attaches to their position as a result of the operation of foreign flag vessels, when attached to your position as an operator of foreign flag vessels at that time?

Mr. McDowell: I object. It is clear from the text that Mr. Isbrandtsen was referring to an effort made to put his company down as a foreign line. He was merely pointing out that the people who were attacking him were foreign lines. I don't see that it is material.

Examiner Robinson: I can see the connection to what he is driving at, but I don't think he is going to get the answer he wants.

The Witness: I say I don't consider it important [fol. 985] what——

By Mr. Galland:

Q. No, you said you didn't think it important that you are a New York corporation. You said, "The important fact is that the Conference lines who attack us are mostly foreign lines."

Why was that important?

A. Important probably in considering that we were being attacked and branded as a Danish company. I am saying that the accusers were mostly foreign lines, and that became important.

Q. It was a case of the pot calling the kettle black?

A. If you want it that way.

Q. Do you consider it important at the present time that some of the members of the Conference, and I think the majority of the members of the Conference, are foreign flag operators?

A. Do I consider it important? I don't know that it makes much difference. An American line cannot any more use this contract *was* are speaking about here than a foreign line can. But I must admit that I particularly object to it in the case of a foreign line.

Q. I asked Mr. Crinkley yesterday, and I ask you now, whether your objection to what the Conference is doing relative to exclusive use contracts, would suit you any better [fol. 986] if all of the members of the Conference were United States flag operators?

A. I can't tell you whether that suits us better or not. I have to consider that.

Examiner Robinson: As I understand your testimony, you think the thing unlawful per se, and the mere fact that there are foreign lines which attacked you just aggravates the situation. That is what you feel?

The Witness: That is what I feel.

Mr. Galland: May the witness testify?

The Witness: That is what I testified.

Examiner Robinson: I think that is what he said.

The Witness: It aggravates me to think that a foreign ship line can come to these shores and do what I cannot do.

By Mr. Galland:

Q. Do you think that as members of the Conference United States flag carriers should be accorded any special privileges that are not accorded to foreign flag ships?

A. That is not our policy, so I understand.

Q. You mean it is not the policy of our Government?

A. That is right.

Q. You think it should be?

A. Never mind what I think. But that is the policy of our Government, and I happen to follow the policy of our Gov- [fol. 987] ernment in that respect.

Q. In that respect.

A. Yes.

Mr. O'Connor: There is a suggestion there that you only follow it in that respect. Do you usually follow it in all respects?

Examiner Robinson: I think the emphasis was put on the wrong word.

Mr. O'Connor: But that is what is going on here.

Examiner Robinson: I took it in the way in which he meant it.

By Mr. Galland:

Q. In the last paragraph of this statement you say, "Finally, we solicit inquiries in connection with our economical freight service conducted without frills or fancy equipment."

Since you have borrowed this statement as an expression of your policy in this case, let me ask you whether you are making any point of the fact that the Conference lines now are providing frills or fancy equipment that your company isn't doing?

A. I don't know of any. They may very well be. I haven't looked into it.

Q. They may very well be, or may not be? You don't know?

A. No.

Q. It is not one of your grievances in the present case?

[fol. 988] A. No.

Mr. Galland: That is all.

By Mr. O'Connor:

Q. Mr. Isbrandtsen, you referred to a lawyer named Englar, who assisted you in the composition of this treatise which has been put in the record. Is that correct?

A. Well, I generally do that so I won't come in conflict with the libel laws.

Q. And this Mr. Englar was a senior member of the well-known Admiralty firm of Bingham, Englar, Jones & Houston, was he not?

A. That is right.

Mr. Hupper: Mr. Ryan never helped you on these?

The Witness: No, I don't believe he did.

Examiner Robinson: Are there any further questions?

Mr. O'Connor: Mr. Isbrandtsen had some corrections of the record. I think the minor ones I have gone over can be taken care of without his attention to them. But there is one on page 87.

The Witness: I had one correction here on page 87, the 14th line from the top. I say to a question by Mr. Hupper, "You were the originator of it, I understand."

Now, my correction is that I have thought so.

By Mr. O'Connor:

[fol. 989] Q. You mean the originator of the contract system?

A. Yes.

Mr. Hupper: You have thought so?

The Witness: Yes. But I don't consider I have a right to publicly express that. I was thinking out loud, and should not have expressed myself in that manner. And I apologize.

Mr. Hupper: You don't need to apologize to me.

Examiner Robinson: Are there any further questions? You are excused, Mr. Isbrandtsen.

(Witness excused.)

Examiner Robinson: We will take a short recess.

(A short recess was taken.)

[fol. 990] Mr. Hupper: I will ask Mr. Andrews to take the stand.

Charles P. Andrews, called as a witness on behalf of the respondents, after having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hupper:

Q. Mr. Andrews, are you the secretary of the North Atlantic Continental Freight Conference?

A. I am.

Q. As such, what are your functions?

A. To attend all conference meetings, to develop information with respect to applications for changes in rates, or reduction or establishment of commodity rates; to prepare dockets for the lines; to analyze those rate applications.

Q. Where is your office?

A. 80 Broad Street.

Q. The 25th floor of this building?

A. The 25th floor.

Q. How long have you been secretary of that conference?

A. Under the present basic agreement, 4490, since 1935.

Mr. O'Connor: Did you say Trans-Continental Freight Conference?

Mr. Hupper: No, North Atlantic Continental Freight [fol. 991] Conference.

Examiner Robinson: That is what he said.

Mr. O'Connor: I thought he said Trans-Continental.

Examiner Robinson: He said it right.

Mr. Hupper: Strangely enough.

By Mr. Hupper:

Q. Were you in the conference offices before you were secretary?

A. Yes.

Q. How many years?

A. Since 1922.

Q. Had you ever been connected with a steamship company before you went with the conferences?

A. No, sir.

Q. You say that you attend conference meetings and lay a docket before the conference members who attend those meetings, is that right?

A. Yes.

Q. I take it you are generally familiar with the provisions of the conference agreement as amended under which the conference members operate?

A. I am.

Q. Will you tell us whether the conference is what is called a unanimous vote or a majority vote?

[fol. 992] A. The conference has the unanimous vote, ex-

cepting with respect to a provision in the basic agreement dealing with emergency rate disturbance.

Q. Otherwise, it is unanimous?

A. That is correct.

Q. What has been the experience as to whether the conference meetings are fully attended by all the members or their representatives?

A. In 1949 there have been no absences. In 1948, there was only one American flag line absent, in all the meetings held in 1948.

Q. You mean in all the meetings held in 1948, there was only one instance where one American flag representative was absent?

A. That is correct. The same thing in 1947.

Q. Take the situation where a representative of a particular line is absent. Are any steps taken by you or other members of the conference to seek the concurrence of the particular absent member?

A. Under the agreement we don't have to, but we do from time to time.

Q. You mean whenever there is an absence, you post the absent member, is that correct?

A. That is correct.

[fol. 993] Q. So it is fair to say, is it not, that in the practical working out of the agreement, you do make certain that there is unanimity of action?

A. That is correct.

Q. How many foreign lines and how many American lines are there operating under this agreement 4490?

A. Four American flag lines and seven foreign flag lines, or a total of 11 altogether.

Q. Can you tell us whether or not the American flag lines and the foreign flag lines get along reasonably well together in the conference?

A. They get along very well together.

Q. Do you find the representatives of the several lines, irresp-ctive of their nationality, reasonably cooperative with each other?

A. Very much so.

Q. Are the discussions fairly complete as to the several

matters that come up, or are they short, or might you call them arbitrary?

A. They are very complete.

Q. Do you find considerable give and take as to the ideas put forward by one or another member?

A. Oh, yes.

Q. I suppose sometimes propositions are voted down as [fol. 994] well voted for, are they not?

A. Oh, yes, a number of applications are passed; others are rejected.

Q. About how often do the conference members meet?

A. About once a month.

Q. Are there committees of the conference that meet more often?

A. No. Our rate committee generally meets prior to the general meeting.

Q. That is to say, about once a month, before the general meeting?

A. That is right.

Q. About how many members are there on your rate committee?

A. On the rate committee we have five United States port lines, and I think six Canadian lines. It is a joint rate committee.

Mr. O'Connor: Right there, will you clear up whether we are talking about the North Atlantic Continental Freight Conference or these four conferences this gentleman represents. He just brought in the Canadians.

Mr. Hupper: Well, I am talking about the North Atlantic Continental.

The Witness: Only.

Mr. Hupper: That is the only one we are talking about.

[fol. 995] Examiner Robinson: As I recall, there are a certain number of Canadian lines who are in there to a limited extent, isn't that right?

The Witness: No, they are not. We have a cooperative rate agreement with the Canadian lines on file and approved by the United States Maritime Commission.

Mr. O'Connor: There are no Canadian lines in this Docket 684, I know that. Now, I would like to have cleared up——

Examiner Robinson: I think we would be glad to clear that up.

Mr. Hupper: Yes.

By Mr. Hupper:

Q. As I understand it, there is a Canadian conference who cooperates with the North Atlantic conference here that you are secretary of, is that right?

A. That is right.

Q. And there is a parity of rates between the two groups?

A. That is correct.

Q. When you talk about a rate committee, as I understand what you have said just a moment ago, members representing, members of that committee representing the Canadian conference sit in the committee that is strictly North Atlantic Continental here, with regard to the formulation [fol. 996] of rates; am I correct?

A. That is correct.

Mr. McGovern: May I interrupt, Mr. *McGovern*, to ask Mr. Andrews to repeat who he said sat on that rate committee. I understood you to say five Americans and six Canadians.

The Witness: That is right.

Mr. Hupper: He said American port lines.

The Witness: United States port lines, I said.

Mr. O'Connor: There are only four in this conference we are talking about.

The Witness: I said United States port lines. I did not differentiate as to flag.

By Mr. Hupper:

Q. When you said port lines, what ports were you referring to?

A. United States North Atlantic ports.

Q. In other words, lines that are members of the North Atlantic Continental Freight Conference whose ships dock at a North Atlantic port, one or the other?

A. That is right.

Q. What is the range of the ports?

A. United States North Atlantic ports.

[fol. 997] Q. Yes, but name them.

A. From Portland to Hampton Roads.

Q. Portland-Hampton Roads range?

A. Yes.

Q. In the beginning of your testimony, Mr. Andrews, you mentioned receiving applications from the shippers in relation to rates and processing the same, analyzing the same, for submission to the rate committee of the conference, is that correct?

Q. Are we to understand from what you said then and confirm now that the conference lines do receive suggestions and requests from shippers and deal with the same in accord with their best judgment?

A. That is correct.

Q. Is that for the purpose of enabling shippers of goods to carry on their business, as well as to enable the member lines of the conference to get business?

A. That is correct.

Q. Tell us whether or not it is the purpose of the conference lines under your secretaryship as described, to deal cooperatively and reasonably with the shippers?

A. That is our purpose.

Q. Do you recall how many sailings of the conference lines took place in 1948?

[fol. 998] A. Yes, I do recall.

Q. About how many?

A. From United States North Atlantic ports to Belgium, Holland, and Germany, 518.

Q. Is the rate of sailings now, so far as you can figure out, progressing about the same as in 1948?

A. Substantially about the same.

Q. How does that number of sailings compare with, say, eight or 10 years ago, before the war?

A. In 1938, from the same ports of loading to the same territory, there were 494.

Q. Slightly more in 1948?

A. That is correct, compared with 1938.

Q. Concerning the operation of members of this conference versus each other, let us say, have you noted whether or not there is a spirit of competition there of several lines in the conference?

A. Very much so.

Q. Does that mean that they are all really competing with each other to get business?

A. That is right; they are competing on equal terms. What I mean by terms, at equal rates.

Q. Equal rates, and equal conditions of one kind or another as have been developed under the conference setup, is that right?

[fol. 999] A. That is right.

Q. Have you observed any purpose on the part of the foreign lines to dominate or be arbitrary with the American lines in the conference?

A. I haven't run across any such condition in the conference.

Q. Have you heard any complaints in conference meetings or otherwise in your talks with any of the members in the conference that such a situation was developing?

A. I have not.

Q. Are you on friendly terms with all the members of the conference?

A. I am.

Q. Do you maintain yourself personally in a fairly useful position?

A. I do at all times.

Q. Do you have occasion sometimes to help straighten out minor disputes?

A. On occasion, yes.

Q. When you get into such a situation, I take it, you exercise as firm a hand as you can, don't you?

A. I endeavor to do so.

Q. Do you find that you have the cooperation of the conference members, all of them, irrespective of nationality, in conducting the conference what you might call peaceably [fol. 1000] and reasonably?

A. Very much so.

Q. As secretary of the conference, do you have contact at all with the Maritime Commission or its representatives?

A. I do.

Q. Do you go to Washington every once in a while to confer with the gentlemen in the Bureau of Regulation?

A. That is correct.

Q. Do you find them cooperative with you and with the conference members?

A. I do.

Q. Do you find them interested in what the conference is doing?

A. Very much interested.

Q. Do you have any procedure by which you furnish the Maritime Commission reports of conference dealings and transactions?

A. Yes.

Q. Has the Commission ever asked you for conference minutes?

A. No, they have not; but we do file our minutes with the Commission.

Q. Regularly?

A. Immediately after they are promulgated to the member lines.

Q. That is as a matter of course, is it?

[fol. 1001] A. That is correct.

Q. You keep the Commission fully informed upon what the conference is doing?

A. That is correct.

Q. And I take it that when questions come up in which you think the Commission may be or ought to be interested, you make it a point to be in touch with this, that, or the other person in the Bureau of Regulations?

A. I do.

Q. Have you found them fairly uniformly helpful?

A. Very helpful.

Q. Have they on occasion made suggestion to you as to how the conference should conduct itself or how it should deal with this, that, or the other matter?

A. I do occasionally get suggestions from the Commission.

Q. When that happens, what do you do?

A. I immediately take it up with our member lines.

Q. Do you find that the member lines pay attention to the suggestions that thus come forward from the Commission?

A. Yes, they do pay attention.

Q. And broadly speaking, do they generally pull in with the Commission's point of view?

A. They endeavor to do so at all times.

Q. Can I summarize it by saying that the relations of the Conference with the Maritime Commission through [fol. 1002] you, as thus described, appear to be good?

A. I think that is a fair summary, yes.

Q. Would you go as far as to say that the conference and its members and representatives appear to have the confidence of the Maritime Commission?

A. I believe so.

Q. Did you hear the testimony yesterday—I think it was by Mr. Crinkley; perhaps it did not relate to what the conference lines as between themselves were achieving, but it was related to what American steamship lines were achieving, namely, something around or perhaps better than 50 percent of the cargoes of goods moving out of American ports to foreign countries involved in this Docket 684. Do you recall that?

A. I heard some remarks about it.

Q. Do you happen to know at all what proportion of cargo moving out of our ports, of the routes covered by this docket, was carried by American lines versus what is carried by the foreign lines in the conference?

A. I do not.

Q. Have you any reason to believe that the American lines in the conference are getting less than 50 percent of the cargo that is moving on the conference routes?

A. I have no reason to believe that.

[fol. 1003] Q. You have never heard it said that they were being short-changed or unduly pressed on the amount of cargo that they were getting, those American lines, have you?

A. Not in my presence, no.

Q. Do you recall what was the approximate division of sailings in 1948 out of the North Atlantic ports of members of this conference, accomplished by the American line members of the conference?

A. Did you ask me the percentage?

Q. Yes, percentage of sailings.

A. In 1938, the American lines' percentage of the total was 35 percent; in 1948, it was 59 percent.

Q. Was the number of sailings thus increasing—and if you say 59 percent of the sailings in 1948 were by American lines, that means 41 percent were by the foreign lines in the conference, that is correct, isn't it?

A. That is correct.

Q. If that figure of 59 percent can be regarded as reasonably accurate, then it is a fair assumption, is it not, that the amount of cargo transported by the American line members of the conference was in excess of 50 percent?

A. I would assume so from those figures.

Q. But you have no figures that——

A. I have no actual figures.

[fol. 1004] Q. —that are accurate on what the actual division was?

A. That is correct.

Q. That is not one of your functions, to gather up such figures, is it?

A. Not by lines.

Examiner Robinson: Do the American line ships, American flag ships, equal if not exceed the size of the foreign line ships in the trade?

The Witness: Sometimes they are larger, and in other cases they may be smaller.

Examiner Robinson: They are just about eq*a*ualized?

The Witness: Yes.

By Mr. Hupper:

Q. The American lines in the conference are which ones?

A. The Black Diamond Lines, United States Lines,——

Q. United States Lines is a very powerful organization, is it not?

A. Yes, they are large.

Q. They have great numbers of ships?

A. Yes. —(Continuing:) South Atlantic Steamship Company.

Q. Where are they based; on Savannah?

A. Their home office is Savannah, Georgia. And the Waterman Steamship Corporation.

Q. They are based on Mobile, are they, their home office?
[fol. 1005] A. Mobile, Alabama.

Q. They are a very substantial line also, aren't they?

A. They are all substantial lines.

Q. All of those lines are very substantial lines, aren't they?

A. Yes.

Q. They are commonly regarded by their fellow members in the conference as good, sound operators, are they?

A. Yes.

Q. In all your contacts with several of those line members of the conference, have you ever had the impression, or do you have it now, that there is any disposition on the part of any one of them not to act cooperatively in their several dealings otherwise than in the best interests of the commerce of the United States?

A. Only in the best interests of the commerce of the United States.

Q. You are satisfied of that personally, are you?

A. I am.

Q. Is it your effort to see that they toe the line to that purpose?

A. We endeavor to do that at all times.

Q. You were here yesterday, I think, Mr. Andrews, when Mr. Crinkley gave some testimony about certain incidents [fol. 1006] and events in relation to the common carrier operations of this company, which is the complainant here, and I am going to ask you now about one or two of those.

He mentioned the case of CARE, the name of an organization that was causing goods to be sent abroad which were used for the purposes of help and relief. Do you remember that circumstance that he talked about?

A. Yes, I do.

Q. Are you posted on it from the side of the conference?

A. I am.

Q. If you will be kindly good enough to tell us briefly your knowledge on that item that was brought forward by Mr. Crinkley?

A. In January, 1947, Mr. Wood, director of traffic for the CARE organization, called at my office, and in connection with his request for a reduced rate on shipments of CARE

food packages, he advised me that shipments would commence February 1, 1947, and requested that I immediately take up with the member lines his application for a reduced rate. His application embraced all of the ports, Baltic, Continental, North Atlantic, and the various Mediterranean ports.

I had quite a talk with Mr. Wood, got all the factors, weight, measurement, value of the packages, his anticipated [fol. 1007] volume of business. Those facts were put before the various lines in the various trades, and around January 28, I advised Mr. Wood that we had established commodity rates on his CARE food package.

We established a reduced commodity rate consistent with its measurement, and the rate to Antwerp-Rotterdam was $1.45, and correspondingly higher to Hamburg-Bremen.

Q. When you said $1.45, you meant per 100 pounds?

A. Per 100 pounds. On or about July 1, 1947, CARE changed their freight broker, and subsequently thereafter, this new freight broker advised me that he had been quoted by Isbrandtsen 10 percent under our rate, and ask that we give consideration to a lower rate.

I took that matter up subsequently with the lines, and around September of 1947, we reduced the rate from $1.45 to $1.35, making corresponding reductions in the rates to Hamburg-Bremen and French-Atlantic ports.

[fol. 1008] Shortly thereafter CARE advised me—oh, before that. In consideration of the reduced rates, CARE had agreed to ship their cargoes by Conference lines. Shortly thereafter, CARE advised me that their broker had made a booking of 85,000 cases with the Messrs. Isbrandtsen and asked for our blessing on that booking. I took that request up with the member lines, and they gave the blessing requested.

The shipment was booked on one vessel, but it subsequently developed that CARE had a strike in their packing plant, and the result was that on the first ship of Isbrandtsen I think there were about 19,000 cases moved, and on a subsequent vessel the balance moved.

Q. When you say a strike in their packing plant, you mean CARE's packing plant?

A. CARE's packing plant.

Q. There was another item referred to by Mr. Crinkley which related to tobacco. Do you recall his having referred to that?

A. Yes.

Q. Will you kindly inform us briefly concerning that situation?

A. Well, the rates on tobacco had been under consideration, so far as the Hamburg-Bremen trade was concerned for a little while, and around September of 1948 I received [fol. 1009] a call from Mr. Pierce at Richmond, Virginia, stating he had been appointed Chairman of the Traffic Advisory Committee of the Tobacco Association of the United States, and inviting me to come to Richmond to discuss with his Committee matters of mutual interest.

I went to Richmond some time in September 1948 and met with Mr. Pierce's Committee.

Q. How many people were there on the Committee?

A. I think there were about eight or ten.

Q. Do you know what general line of business they were in?

A. The export of leaf tobacco.

Q. Is that a large organization represented by that Committee?

A. I understand so, yes.

Q. Now, if you will kindly tell us what happened at the conference you had with them, the substance of it?

A. Well, they talked about the general conditions in the business and the question of a reduced rate. I exchanged some views with them and brought their thoughts back to the lines; and after we had discussed the situation among the lines, they authorized me to have further talks with Mr. Pierce's Committee, which I did. Some time later we reached an agreement on tobacco rates, and the Tobacco Committee unanimously agreed to recommend to their exporting members to sign our contracts.

[fol. 1010] Q. What happened after that?

A. Well, a number of the contracts came in, and we were getting further contracts, when the restraining order was placed on our office.

Q. But you say that as a result of that conference, you were informed by that Committee, representing in a large

sense the tobacco trade, that a rate was agreed on, pertaining to which the trade desired the Conference contracts?

A. They unanimously agreed to recommend the signing of the contracts.

Q. And various contracts came in on that basis?

A. That is correct.

Q. Pursuant to those discussions and that conclusion; that is right, isn't it?

A. That is right.

Q. What happened later in respect to that rate, do you recall?

A. That rate is the same rate we have in the tariff today.

Q. Do you recall what the figure of that rate was that the Tobacco Committee agreed on?

A. I will have to check. I think I have it here.

(After inspecting document) $2 per 100 pounds Antwerp-Rotterdam-Amsterdam, and $2.25 per 100 pounds Hamburg-Bremen.

Q. That was the rate that those shippers agreed on with [fol. 1011] you and wanted a contract for?

A. That is correct.

Q. Now, there was another matter referred to here yesterday by Mr. Crinkley, a situation regarding, as I recall it, the Wayne Pump Company.

A. Yes.

Q. He said there was a little controversy about that. Did you look into that?

A. I did.

Q. What happened?

A. The records show that we had an agreement in 1938 with the Wayne Pump Company, and the Wayne Pump Company Traffic Official told us that the importer in Holland had been quoted a lower rate by Isbrandtsen and had instructed Wayne to ship on vessels of Isbrandtsen.

We exchanged some correspondence with the Wayne Pump Company and it clearly indicated that the Wayne Pump Company did not control the business of this particular consignee, and the correspondence dropped.

Subsequently, that same importer signed the Conference contract.

Q. But with regard to the shipment Mr. Crinkley was

talking about, you did discover, did you not, as Mr. Crinkley said here yesterday, that title to the shipment had passed by the time it reached the shipper?

[fol. 1012] A. That is correct.

Q. Therefore, the Conference lines had no right to insist upon that shipment being made on a Conference ship?

A. It had no right.

Q. You agree to that, don't you?

A. I do.

Q. Mr. Andrews, have you access to the tariff of the Conference members?

A. Oh, yes.

Q. You help make it up, do you?

A. Yes.

Q. Is that filed with the United States Maritime Commission?

A. It is filed at the same time we hand the tariff to the member lines. We don't wait for 30 days.

Q. In other words, you keep on record with the Maritime Commission the tariff of your rates?

A. Correct.

Q. And when you make changes, I take it, your post the Commission immediately?

A. Immediately.

Q. Do you also have access to the tariff of Messrs. Isbrandtsen?

A. I receive a copy of the tariff when Isbrandtsen files in Washington through one of the service organizations in [fol. 1013] Washington.

Q. Do you know whether Messrs. Isbrandtsen file their tariff or the changes in the tariff before 30 days after sailing?

A. According to the tariff corrections, they generally wait about 30 days.

Q. But you have access, substantially speaking, both to the Conference tariff and to the Isbrandtsen tariff?

A. Yes.

Q. Have you caused any comparison of those two documents to be made in your office?

A. I have made a comparison of those two tariffs.

Mr. Hupper: Mr. Examiner, I produce two sets of documents and I ask that they be marked for identification now. I will distribute copies to the other gentlemen here.

Examiner Robinson: No. 12 for identification will be the comparison between the Continental tariff and the Isbrandtsen tariff.

(Document referred to was marked Exhibit No. 12 for identification.)

Examiner Robinson: No. 13 for identification will be the North Atlantic Continental Freight Conference comparison of eastbound rates.

(Document referred to was marked Exhibit No. 13 for identification.)

[fols. 1014-1016] Mr. O'Connor: The North Atlantic only goes eastbound, doesn't it?

Examiner Robinson: I am only reading what I see here. This is typewritten.

Mr. McGovern: Isn't Exhibit 12 eastbound?

The Witness: It so states at the righthand corner of that sheet.

Mr. McGovern: Well, they are both eastbound.

The Witness: Yes, they are both eastbound.

Mr. Hupper: That was put on there so that nobody would get mixed up.

Examiner Robinson: The one that is handwritten is Exhibit 12; the one that is typewritten is 13.

By Mr. Hupper:

Q. Mr. Andrews, those two documents, marked 12 and 13, are the documents that you caused to be prepared as stated just a moment ago, are they not?

A. They were prepared under my supervision.

Examiner Robinson: Off the record.

(Discussion off the record.)

Examiner Robinson: We will adjourn at this time until tomorrow morning at ten o'clock.

(Whereupon, at 4:10 p. m., the hearing in the above-entitled matter was adjourned.)

[fol. 1017] TRANSCRIPT OF HEARING

Met, pursuant to adjournment, at 10:00 a. m.—May 13, 1949.

[fol. 1018] PROCEEDINGS

Examiner Robinson: We will resume.

Mr. McDowell: Mr. Examiner, before we begin this morning I would like to raise a question concerning the Conference minutes with respect to which Mr. Andrews testified yesterday.

I understood his testimony to be that minutes were kept of meetings of the Conference and that such minutes were filed with the Maritime Commission.

I would like to ask whether we could have access to such minutes as relate to the matters involved in this proceeding.

Examiner Robinson: Is that question addressed to me or to Mr. Andrews?

Mr. McDowell: I would like to ask counsel for Mr. Andrews whether those minutes could be made available?

Mr. Hupper: You don't mean here?

Mr. McDowell: I understand the offices of the Conference are here in this building.

Mr. Hupper: I don't think we should bring the Conference minutes into this proceeding. If you want to go down to the Maritime Commission and get them to show them to you, that is something else.

Mr. McDowell: What is this data from the minutes? Are they public documents, do they become so upon being filed [fol. 1019] with the Maritime Commission?

Mr. Hupper: I assume that everything that is filed there is public; I don't know.

Mr. Galland: My understanding is that the minutes are not public documents.

Mr. O'Connor: I know; I inquired if I could look at them and they said—I was told by Mr. Hallett that I could not, that I should apply to the Conference for their permission to look at their copy of the minutes which they filed.

Of course, I think we could subpoena them at any time if that was necessary; but I don't see why, if it is necessary to file them with the Commission, you should not let us go up to your office and look at them.

Mr. Hupper: The only thing you could possibly have any curiosity about is what they say about the contract rates, but not investigating the Conference as a whole.

Mr. O'Connor: Oh, no; just pertaining to the issues here.

Mr. McDowell: I agree, that is all I am concerned with, issues involved in this proceeding. But there has been testimony here with respect to some matters handled at Conference meetings which do apparently pertain to the issues in this case, and I thought it would expedite the matter if we could have access to those minutes here.

[fol. 1020] Mr. Hupper: Well, I don't think we should take that up now. I am not ready to make any commitment. I don't know what they contain. I don't imagine they contain anything that is material to this complaint.

Mr. McGovern: The difficulty, Mr. Hupper, is that you have raised the issue in your direct examination of Mr. Andrews.

Mr. Hupper: There is no issue about it at all. All it is is information.

Mr. McGovern: We would like to have that information before Mr. Andrews leaves the stand.

Mr. Hupper: Well, I don't know what is in them.

Mr. O'Connor: Do you want to apply for a subpoena, then?

Mr. McGovern: Yes. Then, Mr. Examiner, I am afraid we will have to ask for a subpoena, under those circumstances.

Examiner Robinson: You want them now, or shall we go ahead?

Mr. O'Connor: We ought to have them today, for just the year 1948, is it?

Mr. McGovern: What is the arrangement now about the examination and the length of time? Are we going over to Monday?

Mr. Cockrum: On that score, Mr. Examiner, I have one witness here whom I would like to put on sometime during [fol. 1021] the day today. He will be just a short witness, certainly on direct, 15 or 20 minutes possibly, and I would like to get him on today some time.

Examiner Robinson: I do not see any reason why we should not get Mr. Turner on the stand so he could go back home. He has been sitting here for a whole week.

Mr. Hupper: Would you like me to suspend?

Mr. Cockrum: That is perfectly all right, Mr. Hupper; you go ahead with Mr. Andrews. I would like to get him on some time during the day, that is all.

Mr. Hupper: If you want to get him away, I am willing to suspend Mr. Andrews.

Mr. Cockrum: No; that is all right.

Mr. Hupper: I could do that.

Mr. Cockrum: No, that is all right.

Mr. Hupper: Shall I go on with Mr. Andrews?

Mr. Cockrum: Yes.

Examiner Robinson: If you find Mr. Andrews is not going to finish today, we will let Mr. Turner testify so he can go home and tend to his garden.

Mr. Turner: Thank you very much.

Examiner Robinson: I just wish I were there, too.

Mr. Hupper: Let me ask one question, if I may, not on the record, please.

Examiner Robinson: Off the record.

[fol. 1022] (Discussion off the record.)

Examiner Robinson: On the record.

CHARLES R. ANDERSON resumed the stand.

Direct examination (continued):

By Mr. Hupper:

Q. Mr. Andrews, when you took the stand yesterday, I asked you were you the Secretary of the Conference. I failed to ask you whether you were also the Chairman? You are the Chairman, are you not?

A. I am.

Q. Toward the end of your testimony yesterday, I asked you about the tobacco rate situation, and I now ask you if you will give us a bit further information as to rates of the Conference lines and the rates of Messrs. Isbrandtsen in comparison therewith, as you have developed that information overnight?

A. On November 1, 1948 the Conference rates on leaf tobacco to Antwerp-Rotterdam-Amsterdam were $2 per 100 pounds; Messrs. Isbrandtsen, $2.25 per 100 pounds; Hamburg-Bremen, Conference, $2.25 per 100 pounds; Messrs. Isbrandtsen, $2.50 per 100 pounds.

On January 17, 1949, Messrs. Isbrandtsen filed a correction, No. 835, page 111, to their North Atlantic Continental Freight Tariff No. 2, reducing their rates——

[fol. 1023] Q. That is, the Maritime correction, you mean?

A. Filed with the Maritime Commisson.—reducing their rates on tobacco effective December 22, 1948, to the same basis as Conference lines.

Q. That figure on January 17, 1949, in respect of reduction made effective December 22, 1948 was in compliance, as it not, with the ruling in Docket 128, the Section 19 investigation?

A. That is correct.

Q. That rule requires the filing of rates within 30 days from the time of the charge, in substance?

A. Yes.

Q. That is all you have to say on that subject, is it not?

A. That is all I have to say.

Q. I questioned you yesterday as to the procedure of the Conference lines for making and announcing rates. I just want to ask one additional question by way of clarification, so as to avoid misconceptions, if any there be.

As I understood your testimony, applications of shippers in respect of rates were protested by you. You submitted to the Rate Committee of the Conference lines the information that you had thus developed, and from that point, will you explain to us the further procedure with regard to the making and announcing of rates?

A. Well, the Rate Committee receives a docket prepared [fol. 1024] by our office in which all of these——

Q. That means your office?

A. The Conference office in which all the rate data is shown, eliminating the shippers; so they have the information before them as to commodity, the weight, measurement, value, the present rate, what the present rate is, what it yields per cubic foot, the relationship of the current rate to the value of the material; also what shippers are re-

questing in the way of reduced rates, what that yields per cubic foot, and what it represents with respect to the value of the material.

We also have available at the time other information taken from our files, which have been built up for many years, dealing with the history of the commodities, their dangerous nature, the volume, and whatnot.

Q. Now, that is as fairly complete information as you and your assistants are able to assemble as concerns the rate of particular items involved, isn't it?

A. It is our opinion it is very complete.

Q. And as I understood you to say a moment ago, you do not include the names of shippers in this analysis?

A. We do not.

Q. Now, you having prepared that material, you then submit it to the Rate Committee that was mentioned here yesterday, do you?

[fol. 1025] A. That is correct.

Q. And from that point, what happens?

A. The Rate Committee is called into session, and they analyze these rates and make up a report to the general Conference. That is placed before the general Conference, and the member lines then act on the recommendations of the Rate Committee.

Q. By that, do you mean all the members of the Conference?

A. All of the members.

Q. And these rate matters are dealt with and concluded on unanimous vote of the members, are they?

A. That is correct.

Q. Is that all you have to say about the making of rates?

A. That is all.

Mr. Hupper: Mr. Examiner, on the first day of the hearing, May 9th, there was placed in evidence Exhibit 1-J, being the Eastbound Contract form as included in the complainant's documents.

For the convenience of the hearing, and not because of any difference between the document and the one I am about to hand around, I am submitting a copy of the printed form of that eastbound contract as information,

and it is quite agreeable to me that it should bear the same exhibit number.

Examiner Robinson: I don't know whether to give it the same number or not, because we will have a double [fol. 1026] reference at some time.

Do you have any objection to giving it another number? They are easier to handle when they are separate like that. Do you have any objection, any of you gentlemen?

Mr. McDowell: Should it be put in at all, Mr. Examiner? It is merely for the convenience of this hearing, isn't it?

Examiner Robinson: Well, then, we don't have to give it any exhibit number.

Mr. Hupper: You can give it any figure at all for identification.

Examiner Robinson: We can give it No. 14 for identification, if you want to do it that way. Suppose we call it 14 for identification.

(Document referred to was marked Exhibit No. 14 for identification.)

By Mr. Hupper:

Q. Mr. Andrews, you have produced here at my request a pink sheet which has been marked Exhibit 14 for identification, which represents the eastbound form of contracts of the respondent lines in the North Atlantic Continental Freight Conference; that is correct, isn't it?

A. I have.

Mr. Hupper: That document, Mr. Examiner, is the same form as the Exhibit 1-J.

[fol. 1027] By Mr. Hupper:

Q. At the foot of this document, Exhibit 14 for identification, Mr. Andrews, you will observe the names of several lines purporting to be signers of that document. You note that, do you not?

A. I do.

Q. There is one heading there, "Members of North Atlantic Continental Freight Conference," which *which* appears the names of the several respondents in this proceeding as concerns the Eastbound Conference.

To the right of that heading you see an additional heading, "Members of the Canadian Continental Eastbound Freight Conference," do you not?

A. I do.

Q. Is that further heading there and the names of the carriers under it a result of the factual situation that members of the Canadian Conference also sign this contract form; is that right?

A. They are parties to the contract form, but the Canadian lines don't sign it themselves; I sign it on behalf of all the lines in that group.

Q. So there is a signature on their behalf when the contract is made?

A. That is correct.

Q. Does that situation result from the other situation, [fol. 1028] that the Canadian lines conform to the rates charged by the respondent lines in the North Atlantic Continental Freight Conference as concerns shipments out of all North Atlantic ports, Canadian as well as United States?

A. That is correct.

Q. And that is the purpose of the signature being made by you on behalf of the members of the Canadian Conference?

A. That is correct.

[fol. 1029] Mr. Hupper: Near the closing yesterday, two exhibits were submitted, marked respectively 12 and 13 for identification. At that time, we distributed to the other counsel here, Mr. Examiner, copies so that they might have an opportunity to examine the same overnight.

I now offer in evidence these Exhibits 12 and 13 for identification.

Examiner Robinson: Is there any objection?

Mr. McGovern: Are you offering them for identification or offering them in evidence?

Examiner Robinson: No; they have already been identified.

Mr. McGovern: We certainly object. There has been no description yet as to what they are or anything about them.

Mr. Galland: I think they ought to be further described and explained, too.

Examiner Robinson: Yes.

Mr. Hupper: It is all right with me.

By Mr. Hupper:

Q. Mr. Andrews, kindly refer first to Exhibit 12 for identification and tell us whether you caused that to be made up in your office by some of your associates?

A. I did cause that to be made up.

[fol. 1030] Q. It was done under your supervision, was it?

A. That is correct.

Q. Will you describe what it is?

A. Exhibit 12, so identified, contains a comparison only of the items with rates in both the conference tariff and the Messrs. Isbrandtsen tariff dealing with eastbound rates. It does not include cross-indexes. It is submitted for the purpose of——

Mr. O'Connor: I object to any purpose that the witness has unless he is asked some question about it.

Mr. Hupper: Well, let him go ahead. There is no jury here.

Examiner Robinson: Let him identify it for what it is.

A. (Continuing) It is submitted for the purpose of having a complete record, and it shows the number of rate items where Isbrandtsen's rates differ with ours, meaning the conference tariff rates. Excepting with respect to agriculturals, and tobacco, the 528 items referred to in this exhibit——

By Mr. Hupper:

Q. That is near the foot of page 5, is it not?

A. That is correct.—are the principal items moving in volume in this trade?

Mr. McGovern: Did the witness say 525 items?

[fol. 1031] The Witness: 528.

Mr. Hupper: If you will look at the next to the right-hand column on page 5, Mr. McGovern, you will find it.

Mr. McGovern: Thank you, Mr. Hupper.

Examiner Robinson: What I am not quite sure about, you have in the left-and column page numbers. You don't mean item numbers, do you?

I don't know how your tariff is set up; I haven't seen it for some time.

The Witness: Our tariffs and page numbers are on file with the Commission.

Examiner Robinson: I mean by that, how can we know, when you say "page number," just what that reference is?

The Witness: That is the page number of the tariff, it goes right up in the right-hand corner of the North Atlantic Continental tariff No. 18.

Examiner Robinson: But the point I am making is on that page 1 you just referred to, you have articles: abrasive, absorbers, accelerators, acetate, acetone, and acids. Just how are we going to tell, from your simple designation of page 1, which items you are referring to?

The Witness: I said in my exhibit there that there are 10 items with rates on page 1. Of those ten items, there are seven items where the rates are different.

[fol. 1032] Examiner Robinson: I get you.

The Witness: And we show where they are lower and where they are higher in each case.

Examiner Robinson: I did not properly interpret the second column.

Mr. McDowell: One would have to refer back over to the Isbrandtsen tariff and hold the two tariffs side by side to determine, to check this exhibit, or to determine with respect to which rates the differences occur in; is that correct?

Mr. O'Connor: A question was asked you, Mr. Andrews.

The Witness: Well, that is what I had done. I had Isbrandtsen's tariff placed in to our tariff and put alongside of the conference, and from that job we made up this comparison, this exhibit. Both tariffs, by the way, are on file with the Maritime Commission.

Mr. McDowell: Are those the current tariffs now on file?

The Witness: The current tariffs.

Mr. O'Connor: Let me ask you this. Would the items you have, the 10 you have, the 10 items you have on page 1

of your tariff, would all those 10 items be on a page of Isbrandtsen's tariff?

The Witness: It may be, because Isbrandtsen practically [fol. 1033] copied our tariff when they put their tariff into effect.

Mr. O'Connor: You say "may be." But could you take them page by page?

The Witness: I think substantially you could take them page by page.

Mr. Cockrum: And you would have to make a similar reference back to the conference and Isbrandtsen's tariffs to ascertain the commodities on which these changes have been made?

The Witness: That is correct.

Mr. McGovern: And you are suggesting, are you, Mr. Andrews, that both Isbrandtsen and the conference have substantially the same classifications, commodity by commodity?

The Witness: Substantially, I think that is a correct statement.

Mr. McGovern: So that you can get an exact comparison?

The Witness: There are some items in Messrs. Isbrandtsen's tariff which are not in our tariff. I only took the items in our tariff, and I have so stated here in the exhibit.

Mr. O'Connor: Then does that mean that you have more than 1,863 times in your tariff?

[fol. 1034] The Witness: Yes. I just indicated we did not take into consideration the cross-indexes. We only took into consideration where there are actual rates on that tariff page.

Mr. O'Connor: Right there, I am only trying to clear this up, and I hope you don't mind my butting into your examination.

Mr. Hupper: Not at all.

Mr. O'Connor: How many more items did you have in your tariff than this total of 1,863?

The Witness: I think Mr. Crinkley testified around 2,200. I think that is substantially correct.

Mr. Hupper: And this addition comes from the cross-indexes, does it not?

The Witness: Yes, there must be at least 400 cross-indexes in the tariff.

Mr. Galland: What is the column, "Isbrandtsen changes"? What does that mean? Does that mean that Isbrandtsen changed their tariff on seven of the ten items on that page?

The Witness: No, where Isbrandtsen's rate differs from the conference rate? The balance, of course would be that Isbrandtsen's rates are the same as the conference rates, the balance between 547 versus 1,863. But of the 528, those are the principal items moved in this trade.

[fol. 1035] Mr. O'Connor: Well, you will have to get the items, for the mere figures do not tell the story. You have got to compare, item by item, whether it is potatoes or corsages.

Mr. McGovern: When you made your statement in connection with this figure 528, Mr. Andrews, did I understand you to say that except for agricultural commodities and tobacco——

The Witness: I said excepting agriculturals and tobacco, where the rates are the same, the 528 items are the principal items moving in volume in this trade. As Mr. Crinkley said, there is a lot of dead wood in the tariff. It may be that of the 1,800 and balance there may be a lot of dead wood in that figure.

Mr. McGovern: Well, is there anything on this exhibit, Mr. Andrews, you can point to that would aid any of us at arriving at a conclusion that those 528 represent the more important commodities moving?

The Witness: I made a list last night in pencil to show what those items are.

Mr. McGovern: There is nothing reflected on the face of this exhibit that would aid anyone in that conclusion.

The Witness: It is just a quick comparison, so to speak.

[fol. 1036] Mr. Hupper: We can make another exhibit for you, if you like.

Mr. McDowell: I am just trying to get this exhibit in the form in which it will be most useable with the least ambiguity. Wouldn't it be possible to identify specifically the items to which these comparisons refer?

Mr. Hupper: You can do it by looking at copies of the tariff.

Mr. McDowell: Then you would have to work this exhibit back against two tariffs, to do that.

Mr. Hupper: But this exhibit is for the purpose of clarification; we are not dealing with many hundreds of specific items which certainly cannot interest us.

Mr. McDowell: I agree we want a clarification, but I want to avoid any misleading or ambiguous thing here.

Mr. Hupper: There is nothing misleading about this.

Mr. McDowell: I wonder if it could not be possible to identify specifically, where we have contracts on specific tariff items, what the items are.

Mr. Hupper: Anybody can take the two tariffs and go through them, page by page, and we have no objection to your doing that.

Mr. Galland: But that is pretty hard to do, Mr. Hup-
[fol. 1037] per.

Mr. O'Connor: For instance, take page 132, and Mr. Andrews says that Isbrandtsen has three out of 14. We have got to search through all the 14 to find those three.

Mr. Hupper: I know, but he had to do that.

Mr. O'Connor: Yes, but he could have indicated soup and wheat and shoes.

The Witness: I don't think there is any 132 page on here, Mr. O'Connor.

Mr. O'Connor: Well, it is 102.

Mr. Galland: I suggest it would be a great help to everybody if other exhibits could be prepared, showing the items and the conference rate on each item and the Isbrandtsen rate on each item, and the difference between the items; because, Mr. Hupper, although these tariffs are on file, it is quite a nuisance to get at them; even when you are working in the same building where they are on file, as I am. They are still a considerable distance away from my office, and there are a lot of gentlemen in the case who are going to have occasion to refer to them if this exhibit is not supplemented. The Examiner needs them in connection with his summary of the record, and it may involve two or three or a half a dozen visits by each man interested before he succeeds in finding the tariff in its regular place on the file.

[fol. 1038] Mr. Cockrum: Not only, Mr. Galland, do I

think the item number should be shown, but the commodities.

Mr. Galland: Yes, that is right.

Mr. Hupper: What you gentlemen are doing is suggesting we do a lot more work. What has happened here is, Mr. Andrews has gone through the tariff, and he says there are 528 items where Isbrandtsen's rates are lower than those of the conference lines. Anybody else that wants to can go through and check up and tell whether that figure is approximately correct.

Mr. McGovern: Well, Mr. Examiner, our objection with regard to the exhibit, on its face, goes to the fact that as it presently stands, it presently constitutes no more than working notes that Mr. Andrews used in arriving at his conclusions.

Mr. Hupper: All right.

Mr. McGovern: Now, Mr. Andrews can testify as to his conclusions, if he wishes, but these working notes are unintelligible.

Mr. Hupper: They are perfectly intelligible to anybody who really wants to look into it.

Examiner Robinson: Gentlemen, here is the way I look at it. If he wants to offer them in evidence, I am going to let them come in. I realize its deficiencies. I can't compel [fol. 1039] him to make it any broader. If he wants to do it, I concede it would be most helpful. I would like to have it myself. But that is no reason why I cannot receive these. I realize their deficiencies, but they are certainly not incompetent.

Mr. McGovern: Mr. Examiner, we have not really posed an objection yet, because we are really just trying to ascertain precisely what the document shows.

Let me ask Mr. Andrews, for example, what are these little words down in the right-hand margin, which I frankly cannot read.

Mr. Hupper: I am coming to that presently, if you will allow me.

Mr. McGovern: But you have offered it in evidence.

Examiner Robinson: He withdrew it and said he would further identify it.

Mr. McGovern: Oh, I beg your pardon.

Mr. Cockrum: I wonder, Mr. Hupper, may I ask another question along this line?

Mr. Hupper: Yes, surely.

Mr. Cockrum: The witness said something with respect to agriculturals and tobacco, as not being included within the 528, is that, or what did you mean?

[fol. 1040] The Witness: They are not included in the 528, but they are included in the figures, the total 1,863, because those rates in Messrs. Isbrandtsen's rates are the same as the conference rates.

Mr. Hupper: In other words, there is no difference between Isbrandtsen and the conference on those items.

The Witness: But in explaining the 528, I did testify that those were the principal items covered in this trade, and made the exception with respect to agriculturals and tobacco, which are also moving in volume.

Mr. Cockrum: The principal commodities moving in this trade?

The Witness: That is right.

Mr. O'Connor: Let me suggest it is going to take a long time if you are going to do it the way it will have to be done. We will have to take it page by page and see what these items are.

The Witness: I can tell you immediately.

Mr. O'Connor: I mean, that is the way it would go; whereas, if you have some schedule here, it would tell us immediately. After the 7, if you knew the items, it would help a whole lot.

Mr. Hupper: How would reference to the specific items help you, Mr. O'Connor? Our *por*position is that about [fol. 1041] 528 items, call it about, if you please, Isbrandtsen's rates are lower than the conference. Why do you need to know whether it is peanuts or wheelbarrows, or buckwheat, or anything else?

Mr. McDowell: Mr. Hupper, that is very important. He has testified, I understand, I understand he is going to testify, if he has not already, that these 528 items have been selected as those moving in principal volume in the trade. Well, if this is at all material, if it is a material fact, I think we are entitled to check on those items.

Mr. Hupper: You can do all the checking you wish.

Mr. McDowell: Yes, and I think the exhibit ought not to come in unless it is sufficiently complete to facilitate that kind of checking.

Mr. Hupper: Well, the Examiner said he is going to let it in as an aid.

Examiner Robinson: As I say, I realize its deficiencies. There is nothing wrong with the exhibit per se; it just does not give us as much information as we would like to have. For that reason, I can't deny its admission. I would like, just as much as the rest of you, probably more so, to have it more complete, because I agree with you that I think we ought to have these items in here. That was primarily in back of my first question to Mr. Andrews; I wanted to know [fol. 1042] what the items were, you see. But that is no reason why the exhibit cannot come in.

Mr. McDowell: I think it is a very good reason why it cannot come in, Mr. Examiner.

Examiner Robinson: Well, I don't.

Mr. Cockrum: May I ask another clarifying question, Mr. Andrews?

You speak of "agriculturals." What do you mean by "agriculturals"?

The Witness: Agricultural implements, machinery, and parts.

Mr. Cockrum: Oh, you don't mean agricultural commodities, then?

The Witness: No; agricultural implements, machinery, and parts.

Mr. Cockrum: Many of those are included in the 528?

The Witness: You mean agriculturals?

Mr. Cockrum: Commodities.

The Witness: Very definitely.

Mr. Hupper: Foodstuffs, and one thing and another.

Mr. O'Connor: You can see now how important that is.

[fol. 1043] Examiner Robinson: Let me make this suggestion. I cannot force Mr. Hupper to do it, of course, any more than I can force any more of your gentlemen to do it, but perhaps Mr. Hupper would be willing to get up additional exhibits, subsequent to the termination of these hearings, and submit it to all the parties and agree that it would be permitted to come in. I won't give it any number unless it is actually filed, supplementing what he has here. That would not hold you up from going on now.

Mr. O'Connor: Oh, no, we would go on, provided we had

between now and Monday the detailed information regarding these items.

The Witness: Between now and what?

Mr. McGovern: Mr. Examiner, has this exhibit now been identified or merely offered for identification?

The Witness: It has not been offered actually, yet.

Mr. Galland: I think it is a fair request of the conference that they put in this tabulation to show a comparison, item by item, between the conference tariff and the Isbrandtsen tariff. The figures, Mr. Hupper, are not worth anything to people who are not closely familiar with the tariff, unless they are in complete tabular form. Now, in order to get them there, somebody else has got to do the work of getting [fol. 1044] up the form, and you are going to have five or six or eight people competing for the use of the tariff in the Maritime Commission offices, where none of us has any facilities in the tariff room for preparing exhibits for duplicating. I think it would involve a lot less work for Mr. Andrews' office to put it up that way, and I think it would be very useful for everybody to have it.

Mr. Hupper: Gentlemen, I don't see any reason for having this discussion on the record, unless somebody wants it.

Mr. Galland: I don't. I am not interested in putting this into the record. May we have this off the record?

Examiner Robinson: All right.

(Discussion off the record.)

Examiner Robinson: On the record.

Do you offer this now?

Mr. Hupper: I do.

Examiner Robinson: All right, it will be received.

Now, if you want to put anything in further afterwards in extenuation of this, it would be very helpful; but I cannot force you to do it.

[fol. 1045] Mr. Hupper: Well, it is clear enough to me and think if you have regard to the purpose for which I put it in, it is clear enough to anybody for all legitimate purposes. I would not offer it otherwise.

Mr. McDowell: I object. I realize you have ruled but I want the record to show that I object on the grounds that

the exhibit is totally irrelevant and immaterial, and totally lacking in value.

Examiner Robinson: If you see fit to supplement this, you may do so within 10 days after the hearing has been completed, and if there is no objection, it will be put in as an exhibit.

Mr. O'Connor: What opportunity would that give us to point out its inaccuracies?

Examiner Robinson: You would have to get the tariff, then. I am trying to help you, that is all.

Mr. O'Connor: I appreciate that, but unless it comes in before the hearing is closed, how can we examine the witness as to any inaccuracies, and so forth?

Examiner Robinson: You can't, but there are many times in hearings when we give permission to file supplemental exhibits after the hearing is completed, when the parties do not have the opportunity to cross-examine.

I am merely trying to be helpful, that is all.

Mr. McDowell: Mr. Examiner, I think there is a way we [fol. 1046] can examine in respect to this, but I just shrink from the problem. If it is deemed material and relevant to this inquiry, the only alternative that is open to us, as I see it, is that this witness on cross-examination can go through this, item by item, tariff item by tariff item, and we will be here for a week.

Mr. Hupper: You are not representing Messrs. Isbrandtsen, are you?

Mr. McDowell: I am representing the Department of Justice, a party in this case, Mr. Hupper.

Mr. Hupper: I think the Department of Justice is not a party in this case.

Examiner Robinson: Let us not go into that any further.

Mr. McDowell, so long as your questioning is proper, of course I cannot stop you; that is your natural prerogative.

Mr. McDowell: I am not suggesting that, Mr. Examiner, but I am saying that it is the only alternative to test the thing intended to be proved and demonstrated by this exhibit, in the light of the insufficiency of it, on its face.

Mr. Hupper: I suggest to you that they are two tariffs that are really public documents that are on file with the Maritime Commission. Anybody here that wishes can get hold of them.

[fol. 1047] Examiner Robinson: I think we all understand, and it has been marked as Exhibit No. 12, and if you want to cross-examine, that is your privilege. I can see its deficiencies equally well with all you gentlemen, but I think it is relevant. It might have its shortcomings, but it is certainly relevant.

Mr. Galland: I think it is prejudicial, when a document of this kind comes into evidence in support of a very broad conclusion but without any detail that indicates the particulars which support that conclusion, and the result is that anybody that does not like it can do three, four, or five days of work on his own to get up rebutting detail.

Examiner Robinson: There have been many times exhibits put in the record that I have wished were not in, and I am sure you gentlemen have, too; but that is nothing over which I have any power.

I think we all understand that.

Mr. Galland: I will join with Mr. McDowell's objection.

Mr. McGovern: May we go to the record that we object generally to this report on the ground that whether these tariffs are higher or lower, or indeterminate, is entirely irrelevant to any issue raised by the complainant in this case.

[fol. 1048] Mr. Hupper: I might add that I thought I was helping people, and now I seem to have prejudiced them.

Examiner Robinson: All right, Mr. Hupper, you may proceed.

Mr. Hupper: The exhibit is offered in evidence.

Examiner Robinson: It is received and will be marked as Exhibit 12.

(Document referred to, previously marked Exhibit 12 for identification, was received in evidence.)

Mr. Hupper: As I understand it, Mr. Examiner, did we not agree here on the first day of the hearing that any party was free to refer to documents on file with the Maritime Commission concerning matters concerned in the case?

Examiner Robinson: Well, that was agreed at the prehearing conference, that that would be done.

Mr. Hupper: And that carried into the hearing, too?

Examiner Robinson: Yes.

Mr. Cockrum: Documents on file with the Maritime Commission.

Mr. Hupper: Tariff documents.

Examiner Robinson: That is right. It did not necessarily refer to tariffs; it could be Conference agreements or anything pertaining to this situation.

Mr. Cockrum: Well, the Conference minutes are not open to the public, I understand.

[fol. 1049] Examiner Robinson: I know, but you cannot refer to things that are not public. You have to assume that. I cannot make something open which is locked.

Mr. O'Connor: It is not locked by any provision of law.

Mr. Galland: Neither is it open, that is the thing, the trouble with that.

Mr. O'Connor: The reason given to me as to why it is secreted is that the Conferences, the members don't trust each other, and if one member line got a peek at what the other was doing, it would be chaos in the trade.

Examiner Robinson: Be that as it may, I have no control over that, so let us get moving.

By Mr. Hupper:

Q. Mr. Andrews, do you have in hand a copy of Exhibit 13 for identification?

A. I have.

Q. Will you kindly describe that?

A. That is an exhibit to show at a quick glance the percentage differences of Messrs. Isbrandtsen's rates with the Conference rates. "C" shown on the exhibit indicates the Conference rate, and "I" indicates Messrs. Isbrandtsen's rates.

Mr. Galland: In terms of what?

The Witness: Per 100 pounds, or per cubic foot.

[fol. 1050] Mr. Galland: In cents?

The Witness: In cents.

Mr. Cockrum: What commodity does that first item there apply to?

The Witness: What item do you mean: 45 cents "C"?

Mr. Cockrum: 45 versus 40. What is the commodity involved?

The Witness: The rate, 45 cents, represents the Confer-

ence rate on automobiles; the 40 cent rate represents the Isbrandtsen rate on automobiles. The same thing applies to boats, boxes, cans, washing machines, and whatnot.

Mr. O'Connor: The whatnot is what we are interested in.

Mr. Cockrum: As a matter of fact, all commodities carrying that same rate.

Examiner Robinson: Now, I cannot see this exhibit at all.

Mr. O'Connor: I cannot comprehend it.

Mr. McGovern: May we, Mr. Examiner, come down to the second line and find out what that phrase "40 additional 'I' rates mean?

Examiner Robinson: I don't know.

Mr. McGovern: Referring to the exhibit, Mr. Andrews, where it says 50 and 45, where you have 10 per cent——

The Witness: 50 and 45?

[fol. 1051] Mr. McGovern: Yes, the second line, where you say 10 per cent of the Conference rate, what does that figure "40" out there mean?

The Witness: The figure shows additional items in Isbrandtsen's tariff where our rate is 50 cents and Isbrandtsen's rate is 40 cents. So it shows the differential percentage on those items running from 10 to 20 per cent.

We will take, for instance, 50 cents a foot. Fifty cents represents the Conference rate on bedsteads. Messrs. Isbrandtsen's rate is 45 cents on bedsteads. The Conference rate of 50 cents is on plaster of paris. Isbrandtsen's rate is 40 cents there. I shows the differential of Isbrandtsen's rates on the Conference, running from 10 to 20 per cent on items carrying 50 cents Conference, 45 cents Isbrandtsen, 40 cents Isbrandtsen.

Examiner Robinson: But there is no comparison of like matter, that is the thing that concerns me here. One rate might be on plaster of paris and the other rate be on tractors. I don't think it means anything.

Mr. Hupper: I think that is not what he said, Mr. Examiner.

Examiner Robinson: Well, I don't see any use in this at all. I am not trying to deprecate your word, but I don't see [fol. 1052] how it possibly can be helpful.

Mr. Cockrum: I am wondering, Mr. Examiner, how it can be tied up with the commodities.

Examiner Robinson: It cannot; that is the thing.

Mr. Cockrum: I just cannot see how it can be.

Examiner Robinson: You have no page numbers. Even though that is not as good as you might want, at least you can look at the pages and find that out. But this, I don't see any help to it at all.

Mr. McGovern: Yes, let us come down to, Mr. Andrews, line 8, where you have got the figures 70, 65, 50, 55, and 45, under the column "Additional Isbrandtsen Rates." What does that mean?

The Witness: All right. We will take and give you a concrete example on that one. The rate of the Conference is 85 cents a foot, on automobile accessories; Isbrandtsen's rate for the same commodity is 75 cents a foot.

The Conference on boots and shoes is 85 cents a foot; Isbrandtsen's rate is 70 cents a foot.

The rate on electrical bulbs: The Conference is 85 cents a foot; Isbrandtsen's is 65 cents a foot.

The same condition applies on dyes.

Mr. McGovern: When you mentioned 40 up in line 2, I thought that that meant there were 40 additional Isbrandtsen rates that were under the Conference.

[fol. 1053] The Witness: I am only talking about the rates for——

Mr. McGovern: That meant only one additional Isbrandtsen rate?

The Witness: It may mean a number of them, not one.

Examiner Robinson: I am not being facetious in the least about, far from it, but I don't see a bit of help to this.

Mr. McGovern: May I ask one additional question, Mr. Andrews, for clarification.

Does this exhibit, in your judgment, purport to be exhaustive?

The Witness: It is.

Mr. McGovern: You purport to have included in here, under additional Isbrandtsen's rates all other rates that are comparable to your rates, let's say, down at the bottom of the page, $1.75?

The Witness: That is right. I have gone through the tariff and picked out most of the items.

Mr. O'Connor: Now, you see, that does not help us any.

Mr. Hupper: I will terminate this discussion at the moment. I have got something more important to get ahead with, by leaving this presently for identification only, and [fol. 1054] I will revert, if I may, to Exhibit 12.

Examiner Robinson: Suppose we just adjourn now for a little recess.

(Discussion off the record.)

By Mr. Hupper:

Q. Exhibit 12, Mr. Andrews, in the righthand column, on each of the five sheets, under a heading, "Isbrandtsen Higher," you have a total of 17 items, according to the addition on sheet 5.

Will you mention what those items are?

A. On page 1-A, it deals with advertising matter. On Page 6 it deals with asbestos.

Q. Wait a minute; you are on page 6?

A. Yes.

Q. You are on Page 1 of this exhibit.

Examiner Robinson: He means the page appearing in the lefthand column.

Mr. Hupper: Oh, I see.

By Mr. Hupper:

Q. On page 1-A the item in the righthand column is advertising; page 6——

A. Page 6 takes in five asbestos items, the principal movement of which is from Canadian ports, not from North Atlantic United States ports.

Q. What is the volume in the advertising matter?

[fol. 1055] A. Very small. We had practically nothing in 1948, and in 1949 we have only had 800 feet.

Q. Eight hundred cubic feet?

A. That is correct.

Q. Kindly go to the next item.

A. Page 17, calcium carbide.

Q. What do you have to say about that?

A. We have no movement of calcium carbide. The principal movement is from Canadian ports.

Q. Is there any comment to be made on that, as to the nature of the cargo?

A. It is a very dangerous commodity and has to go forward on deck.

Mr. O'Connor: Did you write this with your own Spencerian hand?

The Witness: I did.

Mr. O'Connor: Good.

A. (Continuing:) Take 27, that item refers to cotton refuse.

By Mr. Hupper:

Q. What do you have to say about that?

A. I can't find a heavy movement of that on Conference lines.

Mr. McGovern: I interject, Mr. Andrews, only to ask whether your comments about the movement heretofore as to these other items also referred to the Conference lines? [fol. 1056] The Witness: Yes.

A. (Continuing:) Page 35 refers to three items on meals. They take in peanut meal, grade seed meal, and soya bean meal.

Mr. Galland: That is the second one?

Mr. O'Connor: You have got some hieroglyphics there about——

The Witness: I just showed a designation of meals on the cattle feed page.

Mr. Hupper: He is interpreting the same for you, Mr. O'Connor.

Examiner Robinson: He just named the three types of meals in there.

Mr. O'Connor: I see.

By Mr. Hupper:

Q. What do you have to say about those?

A. I have not as yet completed my investigation of the movement. I got tired last night.

Page 66, that item is a dangerous commodity, and the item is methylicobutylketone.

Mr. O'Connor: The Conference would not carry that, would they?

A. (Continuing:) Page 88, the item referred is albumen egg, under refrigeration.

Page 94 has to do with natural resin, which moves princi-
[fol. 1057] pally out of South Atlantic ports.

Item 95——

Mr. McGovern: May I ask, Mr. Andrews, do you include Norfolk in South Atlantic ports, or are you talking about beyond the Hampton Roads range?

The Witness: I am talking about beyond. South Atlantic is not included in the scope of our basic agreement.

Mr. Malatzky: May I interject? On this egg albumen, is that only when carried under refrigeration?

[fol. 1058] A. Page 95. Synthetic rubber—rubber synthetic.

Mr. Galland: Item 95?

The Witness: Page 95.

Mr. O'Connor: Why do you have resin, synthetic resin?

The Witness: That was a mistake on my part. That should have read rubber synthetic.

Page 103, the item referred to there is soap (hard cottonseed) soap stock.

Mr. O'Connor: Does that mean soap, or soap stock?

The Witness: It is soap stock.

The last item, page 110, refers to wooden cross ties, which principally move out of the South Atlantic and Gulf ports.

Examiner Robinson: Well, let's have a short adjournment.

(A short recess was taken.)

Examiner Robinson: All right, Mr. Hupper.

Mr. Hupper: We agreed to suspend temporarily.

(Witness temporarily excused.)

Mr. Cockrum: Mr. Turner.

CHARLES D. TURNER was sworn and testified as follows:

Direct examination.

By Mr. Cockrum:

Q. Mr. Turner, will you please give your name and busi-
[fol. 1059] ness address?

A. My name is Charles D. Turner, 405 Agriculture Annex Building, Washington, D. C.

Q. Please state your present position and transportation experience.

A. Since November 1937 I have been employed by the United States Department of Agriculture as a Transportation Specialist in the Maritime and Waterways Section, Transportation Rates and Services Division, Marketing Facilities Branch, Production and Marketing Administration.

For four years prior to my present connection with the Department of Agriculture I was continuously employed as a transportation and rate analyst by two other Federal agencies, viz: Office of Defense Transportation and the United States Maritime Commission.

Prior to my Federal employment my entire adult life was spent in steamship, railroad, and industrial transportation and traffic work.

Q. Mr. Turner, are you familiar with the issues involved in the present proceeding?

A. Yes, in a general way.

Q. For whom do you speak in this proceeding?

A. For the United States Department of Agriculture.

Q. Please state the interest of the Department in this
[fol. 1060] proceeding.

A. Our interest in this proceeding is twofold: (a) Under Section 203(j) of the Agricultural Marketing Act of 1946, the Secretary of Agriculture is directed and authorized to assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products, processed and unprocessed, and farm supplies by making complaint or petition to the Maritime Commission with respect to rates, charges, tariffs, practices,

and services; (b) the Department itself also has a direct interest in this proceeding in that it owns or has control of great quantities of farm products, substantial portions of which have been, and will continue to be, exported through our North Atlantic ports to Belgium, Netherlands, and Germany. The interest of the Department in this proceeding is especially keen at the present time because of the Government's far-flung postwar rehabilitation program abroad. Should the respondents succeed in the present case it is not unlikely that similar action would be taken by other Conferences, thus affecting a vastly greater amount of our foreign commerce.

Q. Mr. Turner, do you care to comment briefly regarding the historical background of the United States as an exporting nation of agricultural commodities?

[fol. 1061] A. Yes, sir. Historically, we have been an exporting nation of agricultural products because (a) we produced more than we consumed, (b) the economy of our agricultural producers specifically and our country generally have been benefited by such opportunities, and (c) an important part of these exports were accorded open market steamship services and charges that better enabled us to compete with other nations. The latter has been a very important factor in the development of a great and growing overseas market for our surplus commodities, and the Department of Agriculture would like to keep it that way.

Q. Now, Mr. Turner, you speak of open market steamship services and charges. What do you mean by that term.

A. Well, I mean by the open market, referring specifically to charter rates and vessels and not liner services.

Q. You mentioned surplus commodities. What was the situation in this respect during the war years, and what is the present export program for agricultural products during the fiscal year ending June 30, 1950.

A. During the war years there was no surplus of agricultural products in this country because of our heavy domestic and foreign requirements, but today, notwithstanding the tremendous quantities being sent overseas under Economic Cooperation Administration and Military

Government Relief in Occupied Areas programs, surpluses of certain commodities are beginning to appear. Were it [fol. 1062] not for these relief programs, the surpluses would probably be much greater.

As to future exports of agricultural products, our Production and Marketing Administration, for its own use, has made preliminary estimates, that on basis of average normal production the total exports of all grains for the fiscal year 1949-50 will be slightly less than the 1948-49 exports, which are estimated at approximately 20 million short tons.

For rice, estimated exports will be about 10 per cent under the 1948-49 period, which is estimated at approximately 590,000 short tons; cotton and cotton linters about 6¼ million running bales as compared with an estimated 5 million bales for 1948-49; and tobacco approximately 270 thousand short tons as compared with about 240 thousand short tons expected to be exported during the fiscal year 1948-49.

Again, based on anticipated average normal production, it is estimated the availability of each of these commodities will be slightly in excess of estimated exports and domestic requirements.

Anticipated availability of many other agricultural products, with few exceptions, likewise is in excess of estimated export and domestic requirements.

Q. What economic effect do you believe open market steamship competition would have on these future export [fol. 1063] programs?

A. In my opinion, such a competitive situation would result in lower ocean charges, and any downward trend in ocean transportation costs would tend to have a favorable economic effect on agricultural products by increasing the quantities exported and thereby contribute to a reduction of surpluses wherever they may exist.

Q. Have you any exhibits to present, Mr. Turner?

A. Yes, I have three.

Mr. Cockrum: Mr. Examiner, there have been distributed a one-page proposed exhibit entitled "Domestic Exports of Selected Agricultural Products to the Netherlands, Belgium-Luxembourg, and Germany, which moved in com-

mercial vessels via North Atlantic Ports during the Fiscal Year ending June 30, 1948."

May that be assigned an exhibit number?

Examiner Robinson: Do you want to put it in as an exhibit now, or just for identification?

Mr. Cockrum: Just for identification at the present time, or we can do both right now; I don't care.

Examiner Robinson: Is there any objection to it?

Mr. Hupper: Let us just identify it.

Examiner Robinson: All right. It will be marked Exhibit 15 for identification.

[fol. 1064] (Document above referred to was marked Exhibit 15 for identification.)

By Mr. Cockrum:

Q. Will you proceed now, Mr. Turner, with your statement?

A. This exhibit which has been identified as Exhibit No. 15 was compiled under my direct supervision from records of the Department of the Census, U. S. Department of Commerce.

This exhibit is designed to show tonnage figures covering a few of the principal agricultural products, both raw and processed, that moved through North Atlantic ports to ports in Belgium, Netherlands, and Germany (excluding the German Baltic) during the 12-month period, July 1947-June 1948.

These shipments, aggregating 1,027,253 tons (2,000 pounds), are typical of past, and perhaps future, shipments through these ports to those foreign countries. Tonnage figures shown in the exhibit include only exports moving in commercial vessels. Cargo transported in vessels manned by the military is not included in this exhibit for the reason the military cargo statistics are not shown by ports.

Likewise, the exhibit does not show whether the shipments moved in Conference or Non-Conference line vessels. To have made such breakdowns from the records would have been impracticable, if not impossible.

[fol. 1065] Under various directives from Congress pro-

grams have been created that authorize the shipping of items identified in the exhibit. It is, of course, possible that under a continuing or analogous arrangement other quantities of the same items will move similarly in the future. Indeed, it is probable that the list of these items may expand; especially is this possible if the foreign countries should require our further active assistance or if we should accumulate surpluses of agricultural products and dispose of them abroad.

[fol. 1066] Mr. Cockrum: Mr. Examiner, there has been distributed as a proposed exhibit a one-page statement, "Statement showing domestic Exports of selected agricultural products to the Netherlands, Belgium-Luxembourg, and Germany, which moved in commercial vessels via North Atlantic ports (Portland, Maine/Hampton Roads Range) to foreign ports (Antwerp/Rotterdam/Amsterdam and Hamburg/Bremen/Bremerhaven range) during the fiscal year ending June 30, 1948; also commodity weights with freight charges thereon computed on basis of present or proposed contract rates as well as on proposed non-contract rates with the differences shown in dollars." May that be assigned an exhibit number?

Examiner Robinson: Exhibit No. 16 for identification.

(The document above referred to was marked Exhibit 16 for identification.)

By Mr. Cockrum:

Q. Mr. Turner, will you now describe what has been marked for identification purposes as Exhibit No. 16.

A. This exhibit covers the same commodities exported as was shown in Exhibit No. 15 on which the ocean rates are named in cents per 100 pounds, except bulk grain. The proposed contract and non-contract rates on bulk grain are the same. This exhibit shows the commodity, weight, present tariff or proposed contract rate and freight charges; [fol. 1067] proposed non-contract rate with freight charges computed on that basis, together with the differences in dollars. The exhibit also shows the cargo totals 236,528.5 tons (2,000 pounds), freight charges, based on present tariff or proposed contract rates, $5,323,778.50, and a dif-

ference of $1,082,893, which is 20.34 percent over the freight charges based on present tariff or proposed contract rates. The purpose of the exhibit is to focus the Commission's attention on the magnitude of this subject and the vast amount of revenue in freight charges involved, particularly when it is considered the tonnage shown represents little more than ten percent of the total domestic agricultural products exported annually.

Mr. Cockrum: Now, Mr. Examiner, there has been distributed a one-page proposed exhibit entitled, "Domestic exports[1] of principal agricultural products to all foreign countries which moved through various continental United States ports during the fiscal year ending June 30, 1948." May that be assigned an exhibit number?

Examiner Robinson: Exhibit No. 17 for identification.

(The document above referred to was marked Exhibit 17 for identification.)

By Mr. Cockrum:

Q. Mr. Turner, will you continue with your statement [fol. 1068] with respect to this exhibit?

A. This exhibit shows domestic exports of principal agricultural products to all foreign countries which moved through various continental United States ports during the fiscal year ending June 30, 1948—in other words, this is an overall statement of practically all agricultural products exported.

Q. Did you prepare this exhibit, Mr. Turner?

A. I did.

Q. Or was that prepared under your direct supervision?

A. It was prepared under my direct supervision.

Q. Mr. Turner, what is the position of the Department of Agriculture with respect to the proposed exclusive patronage rate system involved in this proceeding?

A. The Department is opposed to it: (a) We believe that the exclusive patronage contract rate system here involved will adversely affect the free movement of agricultural product and farm supplies in foreign commerce; (b) that a shipper of agricultural commodities should be free to bargain with independent Non-Conference carriers and

thereby obtain the cheapest transportation charge available without being penalized when he fails to route all his tonnage via conference lines; (c) that the exclusive patronage feature of the contract is objectionable and should be eliminated because it appears to be designed to monopolize [fol. 1069] water-borne transportation employed in carrying on the foreign agricultural commerce of the United States; and (d) that in the system, which contemplated a two-rate system for the same shipment, if one rate (the lower) is fair and equitable, the other (the higher) is discriminatory, inasmuch as it is preferential to the contract shipper and prejudicial to the non-contract shippers.

Mr. Cockrum: Mr. Examiner, that is all on direct.

I tender Exhibits 15, 16, and 17 for identification, in evidence.

Examiner Robinson: Have you any objection.

Mr. Tupper: I make an objection that they have no place in this record, are irrelevant and immaterial.

Examiner Robinson: Are there any other objections?

(No response.)

Examiner Robinson: They will be received and marked Exhibits 15, 16, and 17.

(Documents above referred to previously marked for identification as Exhibits 15, 16, and 17, are received in evidence.)

Examiner Robinson: Is there any cross-examination?

Mr. Hupper: Are you going to examine, Mr. O'Connor?

Mr. O'Connor: I have no questions now.

Mr. Galland: I have some questions.

Mr. Malatzky: I would like to ask a question.

[fol. 1070] Cross-examination.

By Mr. Malatzky:

Q. Do these products move both through Government channels and private trade channels?

A. I think the exhibits clearly indicate commercial vessels, you see, and then from all ports.

Q. No, I don't mean that, do private shippers send the goods out as well as the Government?

A. Oh, yes, all shipments that move on commercial vessels, if you are speaking of the——

Q. I am not speaking of the type of vessel, I just want to know the character of the trade. I know that the Government sends out certain products. Do private shippers also ship out the same products?

A. They do; that is also my understanding.

Examiner Robinson: In other words, your exhibits prove both Governmental as well as ordinary commercial shippings?

The Witness: That is correct.

By Mr. Galland:

Q. Mr. Turner, how is the position of the Department of Agriculture with reference to this matter determined?

A. It is a policy that was agreed about in our own division.

Q. Does it represent the personal views of the Secretary [fol. 1071] of Agriculture?

A. It was approved by the Director of the Marketing Facilities Branch, and was passed by the Information Office.

Q. That determination is made pursuant to a delegation of authority?

A. That is my understanding.

Q. Is that correct? Has the Department of Agriculture ever signed any exclusive patronage contracts?

A. Not to my knowledge.

Q. Has the conferences, or the conference that is involved in the eastbound movement in this proceeding ever demanded that the Department sign exclusive patronage contracts?

A. I think I can answer your question this way. It is my understanding, although I am not positive about it, that the tariff itself, in the tariff is an item providing that the governmental agencies are not required to sign the exclusive patronage contract system. That may not be true as far as this particular conference is concerned, but I am sure it has been as far as some other conferences are concerned.

Q. Now, I understand that the Exhibit 16 covers not only government exports, but exports through commercial channels as well, is that correct?

A. That is correct. The records of the Bureau of the Census do not show whether they are government-owned [fol. 1072] shipments or commercial-owned, but it is my understanding, and I was so informed by the Bureau of the Census, that it does include all shipments regardless of owners that moved on commercial vessels.

Q. Have you any means of knowing what proportion of the total shipments covered by this exhibit, and that total appears to be something over 236,000 tons, represented shipments made by the Government?

A. Let me understand you. You are referring to two hundred and something thousand tons? Exhibit 16 covers a total of 1,082,000 tons—no, wait a minute, I beg your pardon, I am confused on which exhibit you are speaking of.

Q. No. 16, and I was reading the first line under the recapitulation.

A. 473,000— will you repeat the question, please.

Q. What proportion of the tonnage shown on the first line of the recapitulation represented Government export?

A. I have no way of knowing.

Examiner Robinson: Let me correct you here. You said 473,000, but that is only a half-ton, the tonnage is 263,000.

The Witness: That is what was confusing me there, you see.

By Mr. Galland:

Q. You show on the last line of the recapitulation the [fol. 1073] different flow of these products from the origins mentioned to the destinations mentioned at non-contract rates. The freight would have been bigger by something over a million dollars, is that right?

A. That is correct.

Q. To the extent that those shipments were made by the Government, the freight would not have been any bigger regardless of the contract-non-contract situation, isn't that correct?

A. Under the present tariff provisions, that is correct.

[fol. 1074] Q. Are agricultural products customarily shipped by the Government in liner service, or do they generally go in bulk on a chartered basis?

A. Well, do you mean the Governmental shipments or the tonnage involved, which?

Q. Tonnage.

A. The tonnage involved, I would say, is principally or largely made up of both, and my understanding is a large portion of that moves in non-Conference vessels.

Examiner Robinson: Full cargo?

The Witness: That's right, full cargo.

By Mr. Galland:

Q. Full cargoes are moving in ships chartered for the purpose, is that not correct?

A. That is true.

Q. And as you understand it, the Conference tariff has no application to a movement under those circumstances, isn't that correct?

A. That is correct. However, there is a considerable portion of the bulk grain, so I am informed, that is moving by Conference lines now, but not in full cargo lots.

Q. You say on page 4 of your statement, in response to a question as to what effect open market steampship competition would have on future export programs, that in your opinion such a competitive situation would result in lower [fol. 1075] ocean charges. Would that be true with respect to agricultural commodities that are shipped in chartered vessels, full ship loads?

A. That would have an effect on it, a certain effect.

Q. In what respect, sir?

A. Well, for instance, if your full cargo rate was based on, we will say, $10 a ton, and a certain proportion of the bulk grain moves in liner service, it would have a tendency to lower the liner service rates on that portion of the grain which moved by berth operation.

Q. Referring now only to that portion which does move in liner service?

A. That is correct.

Q. I don't remember whether I asked you if you know what that proportion would be as relative to grain?

A. No, I don't, I only know that it is a proportion. It might run as high as 25 per cent, but I am not sure.

Q. To the destinations served by the lines in this trade?

A. That's right.

Q. Is there any element to this ocean freight service other than the price in which the Department of Agriculture is interested?

A. Oh, yes—service, frequency of sailings.

Mr. Cockrum: Mr. Examiner, I think I shall object to further pursuance of that line of questioning. It is cer- [fol. 1076] tainly very definitely beyond the scope of the direct examination.

Examiner Robinson: Not the way I see it, when you read the last paragraph of the statement. He gives his reason why he doesn't want the Conference rate system, and it is all tied up part and parcel.

Mr. Cockrum: All right.

The Witness: But let me finish my answer to the question.

Mr. Galland: All right; go ahead.

The Witness: Will the reporter read that, what I said so far? I haven't finished with my answer to it.

(The reporter read the last answer of the witness.)

By Mr. Galland:

Q. You want to expand that?

A. Yes. On a certain portion of the agricultural products moving into export trade, the vast majority of the articles, agricultural products exported, undoubtedly the frequency of sailings would not be an important element. It would be in some instances, but not all.

Q. But frequency of sailings in the transportation of full ship loads is a matter that has little, if anything, to do with the sailing schedules of common carriers, isn't that your——

A. Generally speaking.

[fol. 1077] Q. Now, on the seventh page of your statement just after the letter (b) you say, "that a shipper of agricultural commodities should be free to bargain with independent non-Conference carriers and thereby obtain the cheapest transportation charge available without being penalized when he fails to route all his tonnage via Conference lines."

Now, in so far as your Department as a shipper, it is free to bargain with anybody, independent carriers, Conference carriers, or any other kind, isn't that correct?

A. I can't answer that directly, but it is my understanding that that is true with the various Governmental agencies.

But don't overlook the fact that we have two interests in this proceeding.

Q. I understand that one is on behalf of your own Department as a shipper, and one on behalf of the private shippers of agricultural commodities.

A. That's right.

Q. Are you able to make any statement based upon consultation with individual shippers, private shippers of agricultural commodities as to whether they favor or oppose the exclusive patronage contract system?

A. No, sir, I am not.

Q. Under Item (c) on page 7 you say, "that the exclusive patronage feature of the contract is objectionable and should be eliminated because it appears to be designed to [fol. 1078] monopolize water-borne transportation employed in carrying on the foreign agricultural commerce of the United States."

Whether it is designed to do that or not, is it doing it in fact?

A. Well, we so considered that it is designed to accomplish that purpose.

Q. Well, I say, assuming that it is so designed, is it having the designed effect? Is it carrying out its purpose?

A. Well, I don't understand that this has gone into effect yet.

Mr. O'Connor: In this trade, the design hasn't been put into action.

Mr. Galland: Well, it hasn't been in this trade but it certainly is in effect in some trades.

The Witness: I am only dealing with this at this particular point; I am only dealing with the issues involved in this proceeding.

By Mr. Galland:

Q. You say, "We believe that the exclusive patronage contract rate system here involved will adversely affect the free movement of agricultural products and farm supplies in foreign commerce."

A. We very definitely believe that.

Q. You are talking about the one here involved, but I suppose by necessary implication you are talking about the [fol. 1079] system wherever it might apply to the extent that it resembles this one?

A. My testimony here is confined to the issue here involved.

Q. On page 2 you say, "Should the respondents succeed in the present case it is not unlikely that similar action would be taken by other Conferences, thus affecting a vastly greater amount of our foreign commerce."

A. I think that is very likely that that would happen.

Q. Well, now, I would like to ask you whether it is your experience that the export commerce of the United States in agricultural products has been monopolized or substantially monopolized by Conference carriers employing the contract rate system in this or any other trade with which you are familiar?

A. My experience doesn't go that far. I am unable to answer the question.

Mr. Galland: I have no further questions.

Examiner Robinson: Is there any other cross-examination? Do you want to examine, Mr. O'Connor?

Mr. O'Connor: No, not now.

Mr. McGovern: I have a couple of questions I would like to ask.

Examiner Robinson: Go ahead.

By Mr. McGovern:

Q. You indicate, Dr. Turner——

[fol. 1080] A. Thank you, but I am not a doctor.

Q. —Mr. Turner, that the Conference tariff on file with the Commission makes a specific exception in the case of the Government, so that the Government is enabled to export agricultural commodities without signing a contract in order to enjoy the contract rate.

A. I testified that that was my understanding of it, but I didn't testify that that was true of my own knowledge.

Q. Yes. Is it your understanding, however, that on the export of the same agricultural commodities by a private

commercial shipper, that the contract-non-contract rates do apply?

A. Well, now, you are speaking generally, or are you confining it to the issue involved in this proceeding?

Q. Precisely—this proceeding.

A. Well, that hasn't gone into effect yet, but if it should go into effect, my understanding is that commercial shippers of agricultural products would be required to sign this exclusive patronage contract agreement.

Q. Yes, we all understand that the system has not gone into effect by virtue of the operation of the temporary injunction, but I am directing your attention only to what appears on the face of the Conference tariffs. As a Transportation Specialist, do you know of any reason under the Shipping Act of 1916 why a private shipper of a particular [fol. 1081] agricultural commodity should be compelled to sign a contract in order to obtain the contract rate?

Mr. Hupper: I object to that question.

By Mr. McGovern:

Q. (Continuing:) Whereas the Government exporting the same commodity is not required to sign that contract?

A. No, sir, I do not.

Examiner Robinson: Everybody else has answered it. I don't see why he shouldn't.

Mr. McGovern: That's all.

Examiner Robinson: Are there any further questions?

By Mr. Hupper:

Q. Mr. Turner, you are a Transportation Specialist?

A. Well, that is what I am classified as under the Civil Service.

Q. Do you deny the implication?

A. Well, I would certainly say that I am not an expert.

Q. A very good start.

I note on page 1 of your statement that before you went with the Government, your entire adult life was spent in steamship, railroad, and industrial transportation and traffic work. What steamship company were you connected with?

A. With the Southern Steamship Company, a coastwise operator, operating between Philadelphia and Houston, Texas.

Q. That was always the domestic coastwise trade?

[fol. 1082] A. That's right.

Q. All right.

A. Prior to that time, I had two or three years' experience with the S. Sgotivch Company of Galveston, Texas.

Q. What did that concern do?

A. They were steamship operators and steamship agents, and I was employed handling matters pertaining to the International Freighting Corporation and its operations.

Q. Is that a duPont interest?

A. Yes, sir.

Q. Did they operate on full cargo basis?

A. At that time they were operating on both full cargo and also on the package freight basis.

Q. Liner business, you would call it?

A. Yes, they are handling sulphur from Texas-Gulf ports, to North Atlantic ports, and they were handling full cargoes of, I understand, Ford products to South American ports, and in between they would operate a coastwise service between Houston and New York.

Q. A very full description of their activities, is that?

A. As far as my connection with the concern—they had other operations, but I was not employed in those departments.

Q. What were your functions there with that Galveston concern?

[fol. 1083] A. Soliciting freight and making freight rates.

Q. And your function with the Southern Steamship Company was what?

A. In the beginning I was Chief Clerk to the General Freight Agent in Houston, Texas, was their Dallas, Texas representative, and from January 1st to April—January 1, 1940 to April 15, 1943, I was Assistant Freight Traffic Manager at Philadelphia.

Q. Have you ever been connected in any capacity with any of the steamship lines operating on the routes covered by this document?

A. No, sir, that is the extent of my steamship experience.

Q. You mentioned railroad employment.

A. Yes, sir.

Q. With what railroad were you associated?

A. The Norfolk & Western, and the Piedmont & Northern.

Q. What functions did you have with those two railroads?

A. I started with the Norfolk & Western Railway as a stenographer, and advanced to rate clerk and traveling freight agent.

[fol. 1084] Q. Then, the Piedmont & Northern Railway——

A. Well, I carried on until World War I came along, and that interrupted the operations, and after the war I was Traffic Manager for the McClarenn Rubber Co., Charlotte, North Carolina, from 1919 until 1929.

Q. You have never been a lawyer, have you?

A. No, sir.

Q. You wrote up all this statement, did you, yourself?

A. Yes, sir, I did.

Q. That you read?

A. Yes, sir, I did.

Q. Including the final paragraph on page 7?

A. I did.

Q. When did you write up this statement?

A. Last week.

Q. You personally did all the investigating that is comprehended within this statement, did you?

A. I did, all the statement work myself and all these exhibits I did myself except I had the services of one man for one day to help me dig out some of these reports down there in the Bureau of the Census office, which are all in code.

Q. You have my sympathy, my very deep sympathy.

A. Thank you, sir.

Q. Was it your suggestion that the Department of Agriculture should intervene in this docket, sir?

[fol. 1085] A. I was agreeable to it.

Q. Well, I know, but was it your suggestion?

A. It was considered at a conference held between my immediate chief and the Director of the Branch, and it was

decided that we would intervene in this proceeding and I was agreeable to it.

Q. Do you know who made the suggestion originally?

A. Well, this—it had been considered, the whole general question has been considered many times before. We were in the MC Dicket 648 case out in San Francisco.

Q. And a representative of your Department appeared at the argument in Washington, did he not?

A. I think that is correct. That was before my connection with the Department of Agriculture, but I think that is correct.

Mr. O'Connor: It might be noted that Mr. Cockrum, who is here, appeared in Docket 648.

Mr. Cockrum: That's right.

By Mr. Hupper:

Q. I understood from your testimony that whenever you dealt with the carrier members of the Conference involved in this docket 684, your Department has always secured the lowest rates charged by those lines, quite irrespective of any contract arrangement.

A. I don't think I testified to that effect definitely. I think I said that it was my understanding that that was true. [fol. 1086] Q. Well, the substance of what you understood is that the same substantially as what I put to you, isn't it?

A. Well, except for that difference that I made there. In our position we do not have anything to do with the actual shipping.

Q. You haven't heard that the Department of Agriculture people don't fail to get the lowest rate there is, do they?

A. No, sir, I have not.

Q. On Conference lines? And I think that you did say that the Department of Agriculture didn't sign contracts.

A. The question was asked, and, as I recall, I testified that the tariffs made an exception for all Governmental agencies.

Q. So that they were not expected to sign contracts?

A. That is right.

Q. We understand the same thing, perhaps in different words.

A. Well, I just wanted to clarify it to make it clear.

Q. You are giving an opinion in your statement that open market steamship companies——

A. What page is that?

Q. Page 4—open market steamship competition, you said such a competitive situation would result in lower ocean charges, and any downward trend in ocean transportation costs would tend to have a favorable economic effect on agricultural products by increasing the quantities exported [fol. 1087] and thereby contribute to a reduction of surpluses wherever they may exist, and so forth.

Do you suggest that the general lowering of rates results in a greater export of commodities?

A. I think that is true.

Q. Doesn't the export depend somewhat on the demand on the other side?

A. Well, under present conditions, I would say that, to illustrate the point, suppose the ECA had sufficient funds to buy and ship a hundred million bushels of wheat to a country—now, the freight charges if they were lower would leave them more money to spend for additional grain.

Q. Well, they wouldn't have to ship more than what is needed on the other side, would they?

A. Well, my understanding is over there they need about everything they can get.

Q. Well, answer my question.

A. Will you repeat your question?

Mr. Hupper: Please read the question.

(Pending question read by the reporter.)

Mr. O'Connor: I don't think they are going to refuse anything.

By Mr. Hupper:

Q. Do you suggest there is any crippling of shipments to the other side by reason of present rates?

[fol. 1088] A. Well, that is something I am not in a position to answer.

Q. I just wondered what the background was of the answer you made on page 4.

A. I said, sir, it is my opinion.

Q. Is it your opinion rates are now too high?

A. In some instances, yes.

Q. Any of the instances that are dealt with in these three exhibits of yours, 15, 16, and 17?

A. Well, there is only one of them that pertains to any rate.

Q. All right. Tell us which number those are affected by——

A. I am not prepared to answer a question of that kind without making a further investigation.

Q. I will say that you have an opinion that some of the rates are too high. The rates on what?

A. I said they might be too high.

Q. So far as your experience goes, your Department has never had any difficulty in getting a rate that suited it, has it?

A. A steamship rate?

Q. Yes.

A. We have had difficulty at one time.

Q. Have you had any recently?

A. On apples, yes.

[fol. 1089] Q. On apples? When did that happen?

A. About a year ago.

Q. I beg your pardon?

A. About a year ago.

Q. With what line did you have that difficulty?

A. With one of the Conferences out on the Pacific Coast.

Q. Now, with any line involved in this Docket 684?

A. No, sir. We have never had any—during my connection with the Department, we have never had any application before this particular Conference for a rate adjustment.

Q. Therefore, you have no complaint to make whatever as to the cooperation of respondent lines here as concerns rates?

A. No, sir.

Q. Hasn't it been the experience of your Department that the respondent lines involved in this docket have always dealt with you very reasonably on the subject of rates?

A. Well, I have just finished saying that we hadn't had any application with them for any adjustment in rates.

Q. Your Department generally gets 10 per cent off the regular rate anyway, don't they?

A. That I don't know, but I understand that that is true, but I have never seen any factual data on the subject.

Q. Well, that is a fairly common understanding, isn't it? [fol. 1090] A. That is correct.

Q. Is it your position that the Maritime commerce of the United States in the interests of the several carriers engaged in it, whether they were Conference or non-Conference, in the interests of the shippers and exports of the United States depends on transportation rates being constantly lowered?

A. You asked me if it was my position?

Q. Yes.

A. My personal position or the Department's position?

Q. You are making the statement.

A. Yes, but I have testified in behalf of the Department.

Q. All right, but I want to know what your views are, because I haven't got the whole Department here.

A. Well, I think, Mr. Hupper, that the Department's position is very clearly contained in my testimony.

Q. Well, you prepared the statement.

A. Yes, sir.

Q. And it is your position that lower rates are constantly beneficial to those several interests?

A. I think that is true.

Q. Always constantly lower is what you are looking for?

A. To a certain limit—not below the cost of operating a vessel, certainly not.

Q. I take it you have read the Shipping Act of 1916, the [fol. 1091] Merchant Marine Act of 1936, also?

A. I have.

Q. You are familiar with the purposes of the statutes?

A. That's right.

Q. And you know the function of the Maritime Commission in carrying out the statutes, don't you?

A. I do—generally.

Q. Now, on page 7 you give an answer to a question posed at the foot of page 6. Did you write that question yourself?

A. This question?

Q. Yes.

A. On page 6?

Q. Yes, the foot of page 6?

A. And the answer on page 7?

Q. That's right.

A. I did. I wrote that question myself, without any consultation with my counsel.

Q. You have counsel?

A. Yes, sir, I do.

Q. Who is your counsel?

A. Mr. Cockrum, over at the end of the table.

Q. And Mr. McDowell is also your counsel?

A. No, sir, he is not.

Q. Did Mr. McDowell, or somebody in the Department [fol. 1092] of Justice, request you to intervene in this case?

A. Me, personally?

Q. The Department of Agriculture?

A. That I can't answer. I can answer the other question directly. They did not consult me about it.

Q. How about Messrs. Isbrandtsen, did they request the Department of *Justice* to intervene?

A. Not to my knowledge.

Q. Now, I want to ask you just a question or two about this answer on page 7. You do not suggest, do you, that the Department of *Justice* is required to deal with any particular carrier, whether it be a Conference carrier or non-Conference carrier?

A. I have no connection with the Department of Justice.

Q. Pardon me; I should have said the Department of Agriculture. The Department of Justice is so prominent I forget everybody else. Just put "Department of Agriculture" in place of "Department of Justice," and perhaps you can answer the question.

A. Well, I am going to have——

Mr. Cockrum: Read the question back, Miss Reporter, please.

Examiner Robinson: Substituting the words as requested.

(Pending question read by the reporter with the correction suggested.)

[fol. 1093] A. The answer is no.

By Mr. Hupper:

Q. The Department of Agriculture, therefore, has had no experience with what you might call exclusive patronage contracts?

A. Well, I think we are going to have to suggest, rephrase your question there just a little bit.

Q. Go ahead.

A. We have, our interest in this proceeding is twofold, as I pointed out. Now, if you mean the Department's direct interest in it, my understanding is that they have not——

Q. All right, now, go to what you might classify as an indirect interest.

A. Well, the indirect interest would all come under the provisions of those proposed exclusive patronage contract agreements.

Q. How do you know that?

A. I think that is generally understood. The tariffs provide—rather, they don't make any exception to shippers of agricultural products.

Q. Well, they don't have to ship by the Conference lines if they don't want to, do they?

A. They might in some instances; there might not be any other service.

Q. Well, you know well enough there is service of other [fol. 1094] lines to the ports involved in this proceeding.

A. I don't understand that the non-Conference carriers involved in this proceeding, you see, serve all the ports in Germany, the Netherlands, Belgium. That is not my understanding. It may be true. I don't know.

Q. Well, of course, you can't ship by any line to a port that that line doesn't serve, can you?

A. Certainly not. That is the reason I answered your question the way I did.

Q. Now, you make a statement in here, this is under (c), "that the exclusive patronage feature of the contract is objectionable and should be eliminated because it appears to be designed to monopolize water-borne transportation employed in carrying on the foreign agricultural commerce of the United States."

Why do you say that?

A. Well, that is the——

Q. Designed to monopolize?

A. That is the Department's position and their belief in the matter.

Q. Well, just analyze for us a bit how they arrive at that position, and why they have that belief?

A. Well, as previously pointed out, we think that we should have competition, free competition, in the trade so that it would have a tendency to lower the rates generally.

[fol. 1095] Q. That is your proposition with regard to American shipping, I take it?

A. To a reasonable extent, yes.

Q. Well, you would like to have all the lines in a particular trade competing very freely with each other without any Conference rate whatsoever, wouldn't you?

A. I wouldn't say that

Q. Well, you talk about free competition so that rates would be lower—you favor that, don't you?

A. We are interested in lower freight rates.

Q. Constantly lower freight rates?

A. To a reasonable compensatory level.

Q. Reasonable compensatory level? You don't know anything about what is compensatory in a given trade, do you?

A. Well, no.

Q. Are you familiar with the fact that the Conference agreement involved in this proceeding provides that any line that so desires can enter the Conference?

A. I am.

Q. I take it you are familiar also with the fact that every member of the Conference, whether an initial member or a new member, is free to participate in the Conferences?

A. I understand that to be true.

Q. And do you understand there is any restrictive level, [fol. 1096] any restriction as to the top or the bottom of the rates that may be fixed under those contracts by the carriers?

Mr. O'Connor: Do you understand the question?

Mr. Cockrum: Do you understand the question, Mr. Turner?

The Witness: I don't. Would you repeat the question?

(The pending question was read by the reporter.)

Mr. O'Connor: By "the Conference" you mean, don't you——

Mr. Hupper: By people who are members of the Conference.

By Mr. Hupper:

Q. Whether they are new or old members.

A. Well, of course, I am not familiar with the procedure and policy of the Conference, and I don't know what they would consider the ceiling or the bottom of a rate level.

Q. Well, I am asking you this question because in your answer here you give the impression that you know quite a good deal about this proposition. —"they appear to be designed to monopolize," et cetera. I wonder where you got that idea?

A. Well, I read the agreement, and that was my reaction to it.

Q. Well, you don't get that idea from any experience you [fol. 1097] have had, or you know the Department of Agriculture has had?

A. I have already testified that we have had no experience with this particular Conference.

Q. All right. You don't assert, do you, that you consider it to be the business of the Conference lines to fix rates at unreasonable levels?

A. I haven't so testified.

Q. You don't assume that the Conference lines, if they had any judgment entitling them to be in business, would fix rates at a level that would be unreasonable or that would drive freight away, do you?

A. Well, we have had, not in this Conference, but in other rate-making bodies, we have had rates that we considered unreasonable.

Q. Not in this Conference?

A. I have already testified to that.

Q. (Continuing:) That is involved in Docket 684? I take it your Agriculture Department, Mr. Turner, receives regularly a copy of the Conference tariffs and changes in it?

A. I don't believe we are on the mailing list for their tariffs.

Q. You do receive the Isbrandtsen tariff, do you?

A. No, sir, we do not.

Q. Have you checked into that to know whether you do [fol. 1098] receive those tariffs?

A. We receive two or three Conference tariffs, and I had a check made to see if we did have the Isbrandtsen tariffs, and I was told by the Tariff Room that we did not have, and they could find no record of having received the tariff from this particular Conference.

Q. You mean the North Atlantic Continental Conference?

A. That's right.

Q. When did you make that check?

A. About three weeks ago.

Q. I beg your pardon?

A. About three weeks ago.

Q. Your position in the Department is such that receipt of the tariffs would come to your notice?

A. No, sir, it is not. We have a Tariff Room, and I have nothing to do with it.

Q. You are a lucky man.

A. I agree with you.

Mr. Hupper.: Thank you very much.

Examiner Robinson: It may be apparent if he examined the three exhibits which you have put in, but I haven't had time to do that, but I notice on page 3 where you speak of surpluses, and so forth, of various commodities, at the bottom of page 3 you speak of rice and cotton linters.

Could you tell me approximately what percentage of [fol. 1099] the exports of each one of those commodities goes out through the North Atlantic ports?

The Witness: No, sir, I cannot. The statistics are not broken down so that you can tell.

By Mr. Hupper:

Q. They are practically all though the Gulf, aren't they?

A. That I couldn't answer. I don't know. I don't handle that feature of it, and I don't know. I would naturally assume that almost 100 per cent of the rice would move through Gulf and South Atlantic ports, and that would be largely true of cotton.

By Mr. Galland:

Q. Mr. Turner, has the Department of Agriculture any policy to favor vessels of United States registry in making its shipments?

A. I know nothing of the shipping policy in that respect. We are not directly connected with the actual shipping.

Q. You say you think that ocean rates should be as low as they can be made to the shipper, subject to their being compensatory, is that correct?

A. I think that is fair and reasonable.

Q. You think the Department ships at the lowest compensatory rate as a general policy, is that right?

A. Well, I understand that they have no alternative in the matter, that they have to ship at the lowest rates, [fol. 1100] whether it is compensatory or not.

Q. Do you think that the Department should ship at the lowest compensatory rate to a foreign flag carrier if a lower rate would be compensatory to it than a United States flag?

A. I have no jurisdiction over the actual shipping at all, and I couldn't answer that question.

Q. Well, I asked because you expressed the view that the Department should seek the lowest possible rate which is compensatory to the carrier.

Examiner Robinson: You just don't know the answer to that?

The Witness: I don't know the answer to it, no.

Mr. Galland: That is all.

By Mr. Hupper:

Q. You haven't arranged rates at any time with Messrs. Isbrandtsen?

A. No, sir, I never met Mr. Isbrandtsen or Mr. Crinkley either until I arrived in New York.

Mr. Cockrum: I have two or three short questions on redirect, Mr. Examiner.

Redirect examination.

By Mr. Cockrum:

Q. Mr. Turner, the position taken by the Department in the present proceedings is quite consistent, I presume, with [fol. 1101] that taken by the Department in Docket 648?

A. Very similar.

Mr. Hupper: That would appear in the argument, there, wouldn't it?

Mr. Cockrum: I think so.

By Mr. Cockrum:

Q. I presume, Mr. Turner, in your preparations for this case you discussed the matters involved with your counsel, did you not?

A. I did.

Q. In its participation in a proceeding such as the present one, the Department, I presume, is in constant contact with agricultural producers, agricultural interests throughout the country and obtains its feelings and view of those producers at interest?

Mr. Hupper: The feelings, they obtain those?

Mr. Cockrum: Views, let us say.

Mr. Galland: He testified to me that he hadn't talked to a single shipper.

Mr. Cockrum: I am talking about the Department now. We are talking about the Department.

The Witness: Well, let me get your question straight. He interrupted me over there, you see.

Mr. Cockrum: Will the reporter read back the question, please?

[fol. 1102] Mr. O'Connor: I don't mind counsel sitting alongside of me, but I wish you would devise a means to keep this gallery from sneering and grimacing all the time. It is annoying,—this front row here.

Examiner Robinson: I don't hear a thing.

Mr. O'Connor: I hear it all the time—you are eight feet away—it is all this sneering, it is a habit, and it is deliberate.

Mr. Hupper: Well, the wicked men have disappeared.

Mr. O'Connor: They have sent in their clerks now.

Examiner Robinson: Well, I certainly——

Mr. O'Connor: I hear it all the time—"ha, ha, ha, ha."

Examiner Robinson: If you consider that objectionable, and you think that they are doing it, I shall ask them to desist. I can't hear that over here; I will just take your word for it.

Mr. O'Connor: We can hear it.

Examiner Robinson: I will just ask the gentlemen to restrain themselves as much as possible.

Go ahead and ask that question over again.

By Mr. Cockrum:

Q. Mr. Turner, in its participation in these proceedings before the Maritime Commission, Interstate Commerce Commission, and other agencies, I presume the Depart-
[fol. 1103] ment of Agriculture predicates its participation in large measure upon the views as they are obtained from agricultural producers and agricultural shipping interests generally throughout the country from time to time?

A. That is generally correct.

Mr. Cockrum: That is all.

Recross-examination.

By Mr. Galland:

Q. Mr. Turner, do you know of anybody—the name of anybody in the Department of Agriculture that knows the name of any farmer or any shipper of agricultural commodities who is against the Conference rate system?

A. I don't know what other people——

Q. (continuing) Or for it?

A. I don't know what other people in the Department of Agriculture know. I can't answer that question.

Mr. Galland: Well, I move that Mr. Cockrum's question and Mr. Turner's answer be stricken.

Mr. Cockrum: Well, now——

Mr. Galland: It appears—it does not appear that the witness has any information on the subject.

Examiner Robinson: Overruled, or denied.

Are there any further questions?

Mr. Malatzky: I would like to ask one question.

By Mr. Malatzky:

[fol. 1104] Q. In your many years of experience as a transportation specialist, have you ever come across anything anywhere which would indicate that the Government has a right to a lower rate on the same vessel for the same product as a private shipper or commercial shipper?

Mr. Galland: I object. The witness is not qualified to answer.

Examiner Robinson: Read the question back.

(Pending question was read by the reporter.)

Mr. Galland: I object, in addition, on the ground that the question is beyond the issues in this proceeding.

Examiner Robinson: Well, you can tie it down to the North Atlantic, and I overrule the objection.

Mr. Malatzky: I would like to tie it down to ocean transportation.

Examiner Robinson: We assume that. We are not talking about the stratosphere now.

The Witness: The answer to that is no.

Examiner Robinson: Are there any further questions?

Mr. McDowell: Mr. Examiner, I would like to straighten out one point that I think was probably a slip of the tongue. I believe Mr. Hupper asked the witness a question designed to bring out any knowledge the witness might have as to whether or not the Department of Justice had been asked [fol. 1105] to appear and intervene in this proceeding by the complainant in these proceedings.

I assume that Mr. Hupper was referring to the Department of Agriculture.

Mr. Hupper: Oh, no, I wasn't asking—I said the Department of Justice is so prominent here I almost forgot the existence of the Department of Agriculture.

Mr. McDowell: As a matter fact, Mr. Hupper has been expressing considerable interest on that point, and I would like to ask him if he isn't aware, as a matter of fact, that the Department of Justice was invited by the Commission to intervene?

Mr. Hupper: I am aware of that.

Mr. McDowell: That needn't be on the record, but it seems to be of great interest.

Examiner Robinson: Are you all finished with Mr. Turner?

(No response.)

(Witness excused.)

Examiner Robinson: Is there anything else you want to finish on the statement, Mr. McDowell?

Mr. McDowell: No; I wanted to correct what I think was a slip of the tongue there.

Mr. Hupper: I didn't intend to refer to the Department of Justice. I got them mixed up.

[fol. 1106] Examiner Robinson: We will adjourn until 2:30.

(Whereupon, at 12:35 p.m., a recess was taken until 2:30 p.m.)

[fol. 1107] AFTERNOON SESSION

2:30 P. M.

Examiner Robinson: We will resume.

CHARLES R. ANDREWS resumed the stand.

Direct examination (Continued).

By Mr. Hupper:

Q. Mr. Andrews, you were here this morning during the testimony of Mr. Turner, of the Department of Agriculture, were you not?

A. I was.

Q. Did you hear his statement as to not being informed as to whether the conference tariff was regularly sent to his department?

A. I did.

Q. What is the fact as to whether it has been regularly sent there by you or not?

A. The Department of Agriculture regularly receives copies of our tariffs and corrections thereto.

Q. Does that mean that they have in their files somewhere the up-to-date tariff of the members of this conference?

A. I think that is a correct statement.

Mr. Hupper: Mr. Examiner, I will say for the record in respect to Exhibit 12 that Mr. Andrews and I went into the suggestion that was made here this morning, and being eager to produce anything that may be helpful, Mr. An- [fol. 1108] drews has agreed to have prepared a further document along the lines that were mentioned here as being desirable. Notwithstanding the fact that I do not think it is especially important, we nevertheless will have that prepared. It may take four or five days.

That may serve to illuminate Exhibit 12 and will doubtless cover all that might be material under Exhibit 13 for identification.

Examiner Robinson: It is understood, then, that you will submit that within 10 days after the hearing is completed.

Mr. Hupper: Yes.

Mr. O'Connor: With copies to the parties?

Mr. Hupper: Oh, yes.

Mr. O'Connor: And give an opportunity for the complainant to file any figures that they may have in their possession to the contrary.

Examiner Robinson: Well, I don't know about that. That is rather leaving it wide open as to what you can submit, and I don't know what you are going to do.

Mr. O'Connor: I mean, suppose he files a comparison between the conference tariff schedules and Isbrandtsen, and suppose we, by looking at them, know they are incorrect, and so forth.

[fol. 1109] Mr. Hupper: It would be my idea, I will say, Mr. Examiner, if he finds errors in what we file, he would have a chance to correct them.

Mr. O'Connor: If I file a statement of corrections.

Examiner Robinson: Oh, yes, in that sense, surely.

Mr. Cockrum: That proposed future exhibit will not necessarily be filed, then, prior to the conclusion of the present hearing?

Examiner Robinson: No; I am pretty sure it would not be filed until afterwards.

Mr. Hupper: You may cross-examine Mr. Andrews.

147

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TRANSCRIPT OF RECORD

(Pages 663 to 1197)

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Supreme Court of the United States

OCTOBER TERM, 1951

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A/S J. LUDWIG MOWINCKELS REDERI, ET AL., APPELLANTS,

vs.

ISBRANDTSEN CO., INC., ET AL.

No. 135

FEDERAL MARITIME BOARD, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED JUNE 21, 1951.

PROBABLE JURISDICTION NOTED OCTOBER 8, 1951.

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INDEX

	Original	Print
Record of proceedings before United States Maritime Commission—Continued		
Report and order of the Board—Continued		
Testimony of—Continued		
Charles R. Andrews	990	592
Charles R. Andrews	990	592
Charles D. Turner	1058	632
Charles R. Andrews (resumed)	1107	661
James Sinclair	1145	685
Charles R. Andrews (recalled)	1211	722
Morris S. Rosenthal	1278	764
Arnold K. Henry	1341	802
Charles R. Andrews (recalled)	1436	859
Robert C. Lee	1586	949
James Sinclair (resumed)	1649	984

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—8561

	Original	Print
Record of proceedings before United States Maritime Commission—Continued		
Report and order of the Board—Continued		
Testimony of—Continued		
Hymen I. Malatzky	1705	1019
Hans Isbrandtsen (recalled)	1732	1035
Robert C. Lee (resumed)	1782	1066
P. E. McIntyre	1787	1069
C. W. Kenick	1790	1071
Matthew S. Crinkley (recalled)	1794	1074
Hans Isbrandtsen (recalled)	1831	1097
Hymen I. Malatzky (recalled)	1841	1103
EXHIBITS		
2—Memorandum of agreement on the Westbound North Atlantic trade by the Continental North Atlantic Westbound Freight Conference	1848	1106
3—Agreement No. 4490—Schedule of Rates and Tariff Rules No. 18	1851	1110
4—Tariff No. 2 for Westbound Cargo	1855	1115
5A-5D—Translations of circular letters dated January 17, March 14, May 8, July 18, 1939 from Vinke & Co. addressed to shippers or consignees	1859	1117
6—Letter dated October 25, 1948 from Hall & Cotton, Inc. to Isbrandtsen Company, Inc.	1869	1122
7—Letter dated October 27, 1948 from Boler Petroleum Company to Isbrantsen Company, Inc.	1870	1123
8—Letter dated October 28, 1948 from Louis Marx & Co. to Isbrandtsen Company, Inc.	1871	1124
9—Copy of agreement between Messrs. Stofzniger Centrale P. Ilzerman and Isbrandtsen-Moller Co., Inc., November 17, 1936	1872	1125
10—Letter dated August 30, 1948 from United States Maritime Commission to North Atlantic Continental Freight Conference Chairman	1873	1126
11—Letter dated December 19, 1935 from Isbrandtsen-Moller Company, Inc. to Anaconda Wire & Cable Company	1875	1128
12A—List of 581 Commodities on Which the Rates of Isbrandtsen Co. Inc., are lower than the rates of North Atlantic Continental Freight Conference Lines	1876	1130
12B—Comparison of Conference and Isbrandtsen-Moller Co., Inc. rates from November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam	1903	1159
12C—List of Isbrandtsen-Moller Co., Inc. Contract rates for period January 2, 1937 to August 31, 1939 to Antwerp-Rotterdam-Amsterdam	1916	1178

	Original	Print
Record of proceedings before United States Maritime Commission—Continued		
Exhibits—Continued		
15—Statement showing domestic exports of selected agricultural products to the Netherlands, etc.	1921	1185
16—Statement showing domestic exports of selected agricultural products, also commodity weights with freight charges, etc.	1922	1188
17—Statement showing domestic exports of principal agricultural products to all foreign countries, etc.	1923	1189
18—Letter dated October 1, 1948 from Trans-Atlantic Associated Freight Conferences to Joseph Turner & Co.	1924	1194
19—Letter dated October 6, 1948 from Joseph Turner & Co. to Trans-Atlantic Associated Freight Conference	1925	1194
20—Letter dated October 14, 1948 from Trans-Atlantic Associated Freight Conference to Joseph Turner & Co.	1926	1194
25—Form letter of Isbrandtsen-Moller Company, Inc. in which the offer to make a contract rate was put forward to shippers	1927	1194
28—Copy of cable dated May 25, 1949 from Vinke to Isbrandtsen	1928	1195
29—Copy of letter dated May 19, 1945 from Vinke & Co. to Isbrandtsen Company, Inc.	1929	1195
30—Cover page and extract from report of Committee on International Transport, May 1949, headed "Rate Conferences."	1930	1196

Cross-examination.

By Mr. McGovern:

Q. Mr. Andrews, you testified, I believe, that you were at the present time chairman of the North Atlantic Continental Freight Conference?

A. That is correct.

Q. I believe you also testified that you were secretary of that conference since 1922, is that correct?

A. I am secretary of the conference under the basic agreement 4490 since 1935. Previous to basic agreement 4490 was agreement 48. I was not secretary at that time.

Q. How long have you been chairman of the conference, sir?

A. Since 1947.

Q. At this monthly meeting of the conference to which you [fol. 1110] referred, who attends for the various lines and members of the conference?

A. The members authorized by the individual lines to attend and to act on any matters coming before the meeting.

Q. And that, might I presume, might be anybody from a rate clerk to an executive officer of the line?

A. Generally speaking, from the traffic manager up.

Q. And you pointed out, I believe, that there are four American flag and seven foreign flag lines in the North Atlantic Continental Conference at the present time?

A. That is correct.

Q. Can you compare that situation with the situation prior to the war and indicate to us what the composition of the conference was before the war?

A. I think I can. The present membership consists of—I will give their trade names; I think that is much easier—Cosmopolitan Line, Black Diamond Lines, French Lines, Belgian Lines, Cunard White Star Limited, Maersk, Ellerman Wilson Line, Holland-American Line, South Atlantic Steamship Line, United States Lines, Waterman Steamship Corporation.

The 1938 membership of the lines operating from the United States North Atlantic ports was: American-Hampton Roads Line, Baltimore-Mail Line, Black Diamond

Lines, Belgian Line, Hamburg-American Line, Holland-
[fol. 1111] American Line, North German Lloyd, OSK,—

Mr. O'Connor: That is a Japanese line, isn't it?

The Witness: That is correct.

A. —Red Star Bernstein, United States Lines.

By Mr. O'Connor:

Q. Red Star is one firm, and Bernstein is a separate line?

A. It was one membership at that time, Red Star Bernstein, in 1938.

Q. Well, were they at one time two different lines?

A. I think that is correct, Mr. O'Connor, at one time; but I am talking of the 1938 membership.

By Mr. McGovern:

Q. At the present time, Mr. Andrews, then, if that list as I have hastily jotted it down here is correct, at the present time the following lines are members and were also members in 1938, of the conference: Black Diamond, is that correct?

A. Correct.

Q. The Belgian Line?

A. That is correct.

Q. How about the French; was that in in 1938?

A. No, they were not.

Q. Holland-American?

A. That is correct.

[fol. 1112] Q. And United States?

A. That is correct.

Q. In other words, then, there are in the present conference only four members who were also members of the conference pre-war?

A. That is correct.

Q. As to those four members, can you indicate for the record how many sailings the Black Diamond Line has at the present time?

A. I can give you the 1948 sailings; I cannot give you at the present time.

Q. 1948 will be fine.

A. In 1948, Black Diamond had 82 sailings. In 1938, they had 70 sailings.

Q. The Belgian Line?

A. The Belgian Line had 35 sailings in 1948 and 36 sailings in 1938.

Q. Holland-American Line?

A. The Holland-American Line had 96 sailings in 1948 and 77 sailings in 1938.

Q. And the United States Lines?

A. The United States Lines had 120 sailings in 1948 and 50 sailings in 1938.

Mr. O'Connor: Those were all berth sailings?

[fol. 1113] The Witness: All liner service.

By Mr. McGovern:

Q. Then, can you give us the total number of sailings for all lines in 1938?

A. In 1938, 494.

Q. And in 1948?

A. 518.

Q. I think I neglected to ask Mr. Andrews, the sailings for the French Lines, 1938 and 1948.

A. The French Line had no sailings in 1948 or 1938.

Q. But it was a member of the conference in both those periods?

A. No; they were only a member of the conference in 1948.

Q. So that so far as the question of regularity of service is concerned and stabilization of sailing dates, you have in the conference today only four lines that can claim to have contributed either to regularity of sailings or to a stabilization of sailing dates in the pre-war period, is that correct?

A. Not entirely. I think you might consider the sailings in 1938 of the American-Hampton Roads Line, Baltimore-Mail Line, as now being included with the United States Line.

Q. How does that come about, sir; has the United States Lines acquired those other lines?

[fol. 1114] A. I believe they have.

Q. The total number of sailings, then, for the conference members for 1948, was 518, is that correct?

A. That is correct.

Q. And I believe in your affidavit filed in the District Court, you reported that the total sailings for 1947 were 498; you said; is that your recollection?

A. I think it would be about that. I haven't the exact figures with me.

Q. You referred in your direct testimony to the filing of the minutes of the conference meetings with the Maritime Commission, and in response to a question indicated that you made an attempt to keep the Commission intimately familiar with the detailed operations of your conference. In those minutes that are filed with the Commission, is there reflected on the face of the minutes the action taken by the conference with regard to rate adjustments?

A. That is correct.

Q. In other words, when the conference agreed, for example, to give CARE that adjusted rate, was that action reflected in the minutes of the meeting at which the action took place?

A. It would be reflected by a notation as to what correction was issued by that action.

Examiner Robinson: Would it specifically state in there [fol. 1115] that it was relating to CARE, or just that the action had been taken on the rate?

The Witness: It might relate to both; I cannot recall at the moment. But where there was an action taken at the meeting, it would be reflected by a reference to the tariff correction. But I think I testified yesterday that I had taken up the lines, and I don't think we had a meeting at that time, I took it up with the lines individually when we got this request from CARE, and the rates were promulgated, if my recollection is correct, January 28, 1947, and accordingly, in accordance with the unanimous action taken by the lines, I published the tariff.

By Mr. O'Connor:

Q. Well, you filed a *direction*, didn't you, after you made the arrangement with CARE?

A. I always file my corrections with the Maritime Commission at the same time the tariffs are given to the member lines. I don't wait for 30 days.

Q. What I mean, when you made the adjustment with CARE, you then filed a correction of that tariff on relief goods with the Maritime Commission, didn't you?

A. That is correct.

Q. Can you place the time of that, or have you got the correction here?

[fol. 1116] A. No, I haven't got the correction here; I can tell you the approximate time.

Q. Well, you have it in your office, don't you?

A. Yes.

Q. Would you produce that?

Mr. Hupper: He will check up on that if you want him to.

By Mr. O'Connor:

Q. Will you produce a copy of the correction you filed on these goods in connection with CARE?

A. I can do that.

By Mr. McGovern:

Q. In any case, Mr. Andrews, it is your recollection that the minutes of that particular meeting filed with the Commission would reflect that the adjustment to CARE?

A. I don't think it would reflect that, because I don't —— that that time we had a meeting. I took it up with the lines individually. I testified yesterday that Mr. Wood had asked me to take prompt action on his request for a rate adjustment, and rather than wait for the next meeting, I had taken it up with the lines individually. After securing the concurrence of all the members, I published a tariff correction, notified the CARE people by telephone.

Q. How often would you pursue that procedure rather than having these particular rate adjustments reported [fol. 1117] on the face of the minutes of the meeting?

A. We would pursue it at any time at the request of a shipper who needed prompt action.

Q. And in the tariff change filed, would that reflect the fact that the adjustment was made in consideration of an exclusive contract being given by the shipper?

A. It would not.

Q. Did you feel under any obligation to inform the

Commission of the fact that an exclusive contract arrangement had been worked out with CARE?

A. I think I would if I thought about it at the moment, yes.

Q. But you did not think about it in this particular instance, is that right?

A. No. My purpose at that time was to give CARE quick action, as he requested, and I endeavor at all times to meet shippers' requests for prompt action.

Q. But it is your testimony, is it, that in the normal case, the minutes of the meetings, filed with the Commission would reflect rate adjustments made at that meeting?

A. There is reference to the rate adjustments made at those meetings.

Q. Would those minutes also reflect rate adjustments that had been requested but which were not made?

A. That is correct.

[fol. 1118] Q. It would reflect adverse action, then, as well as affirmative action?

A. That is correct.

Q. And would it further reflect the voting of the membership as to each such adjustment?

A. It would not.

Q. Coming to your suggestion that action in the conference is taken by unanimous action, let us assume in the case of the request from CARE for the adjustment in those relief package shipments that one of the foreign lines, members of the conference, vetoed the proposed rate adjustment. That would have stopped the adjustment, would it not, under the terms of your conference?

A. That is correct.

Q. And it is your judgment, that that fact would not be reflected in any minutes that might be filed with the Maritime Commission as to that particular meeting?

A. It would not be reflected in the minutes, other than the fact that the application was declined.

Q. It is the fact, is it not, Mr. Andrews, with regard to your meetings, that the rules provide with regard to unanimous action that you need have only unanimous consent of the members present?

[fol. 1119] A. At a regular stated meeting and a meeting at which there is a quorum present.

Q. That is right, but it need only to be the unanimous action of the quorum that is present?

A. That is correct, and it is so provided in the basic agreement.

Q. After your monthly meeting, suppose you get an application for a rate change. What is your normal procedure to that application? Is it held in abeyance until the succeeding monthly meeting?

A. Well, immediately a request is made, I generally analyze it to see whether all the rate factors have been furnished. If they have not, I communicate with the applicant for the complete information, and sometimes it may take two or three letters to get the complete facts. As soon as I get the facts I advise them it is coming up at the next regular meeting.

Q. And that is the normal procedure?

A. That is the normal procedure.

Q. So that in the normal case, it would take a shipper 30 days, at least there is a possibility of its taking him 30 days to get the action on his requested adjustment?

A. Well, if he wanted quick action, all he would have to do is say so.

Q. What would happen then?

[fol. 1120] A. I would then analyze the letter and issue a memorandum to the member lines and ask them for their advices, giving all the facts in the circular which I may issue.

Q. I take it, then, you would be authorized to take action only in the event you got unanimous consent of the member lines in that circular fashion.

A. We would have to have unanimous action.

Q. You introduced two exhibits this morning, Mr. Andrews, designed to show a rough comparison between the rates of the Isbrandtsen Company and the conference tariffs. May I ask, how did the conference arrive at its tariff after the ships were returned to the private owners at the conclusion of the war?

A. How did they arrive at it?

Q. What basis did you use for your conference tariff; did you go back to the 1939-40 tariff?

A. I cannot recall at the present time. I handled a lot

of trades there, and I could not tell you at this time what the basis was in effect. I can give you my recollection of it.

Q. What I am coming at is this: Is it your recollection that what you did was to use the tariff that had been in use during the operation by UMA?

A. That is not my recollection.

Q. Then what actual basis did you employ after March 2, 1946, for you- rates?

[fol. 1121] A. I think we drew up a tariff. A tariff had been submitted to the WSA for approval, because all rates at that time required WSA approval.

Q. This is in 1946, after March 2, 1946.

A. I think you said '46, yes. That is my recollection of it, that all rates had to be approved, whether they were upward or downward, by the WSA at that time.

Mr. O'Connor: That was after the WSA went out.

The Witness: I am just telling you my recollection. I will have to check the records. But I am pretty sure that tariff was submitted to the WSA for approval.

By Mr. McGovern:

Q. You don't know, then, precisely what basis you did employ for the establishment of the rates that composed this tariff?

A. Not without looking it up.

Q. Let us take, for example, the rate on leaf tobacco. What was the rate on leaf tobacco before?

A. Well, now, you are asking me something—I think it was around 70 cents.

Q. If I suggested 50 cents, would that refresh your recollection?

A. It could be, but without checking up the old tariffs, I [fol. 1122] couldn't tell you.

Q. What was the rate that you had in effect post-war prior to this adjustment that you speak of with the tobacco trades?

A. I think the rates, I testified yesterday, the rates to Antwerp-Rotterdam were $2.90, and to Hamburg-Bremen, $3.20.

Q. Something, then, in the nature of——

A. That was in, I think, 1946.

Q. 1946. Something, then, in the nature of a 400 to 500 percent increase over the pre-war rate?

A. Well, I don't know what the nature was, but we made a rate consistent with all the rate factors in effect, taking into consideration the high measurement of tobacco, and its value.

Q. Well, I am trying to explore just what basis you did employ in arriving at your post-war tariff used by the conference after March 2, 1946.

A. I just told you I would have to go back and look at that tariff, which is three or four years, to refresh my memory as to what was actually done.

Q. Prior to your quotation to Mr. Pierce and his committee of leaf tobacco exporters of the rate of $2.25 to Bremen and Antwerp, had you not been engaged in discussions with JEIA as to the rate on leaf tobacco for export to the Bremen-Hamburg range?

A. That is correct.

[fol. 1123] Q. Have you not been informed by JEIA that they had received a quotation from Isbrandtsen of $2.25 per 100 pounds?

A. I have no information from JEIA to that effect.

Q. You had no information?

A. From JEIA to that effect.

Q. Did you know that that was a fact?

A. I did not know, at the time.

Q. Do you regard the rate that you gave the tobacco growers, of $2.25, as a reasonable rate?

A. Well, it would be only my personal opinion.

Q. I am asking for that.

A. I think it would be considered such, because the lines approved the rate.

Q. But prior to the granting of that rate, the lines had apparently approved a rate of $3.20.

A. $2.90 and $3.20.

Q. Yes; I am talking about the Bremen-Hamburg range, for the moment.

A. $3.20.

Q. Was $3.20 a reasonable rate?

A. Well, whether it was reasonable or unreasonable, it did not make much difference to German ports at that time,

because there wasn't any movement to German ports. But the rate basis to Antwerp-Rotterdam was $2.90, and I might say for your information that there was a considerable [fol. 1124] movement of leaf tobacco to Belgium and Holland at $2.90, which would appear to be convincing evidence that the rate was not militating against sales or preventing the free flow of business.

Q. Then why did you reduce the rate to those ports to $2.?

A. Why did we reduce it?

Q. Yes, sir.

A. It may have been competitive reasons. The tobacco advisory committee placed certain requests before us which I placed before the lines, and the lines subsequently authorized those rates.

Q. What were the competitive reasons that you think you may have had in mind?

A. I did not have any competitive reasons. The lines make the rate; I don't make the rates.

Q. I understand that, but I thought that you suggested that competitive reasons may have played a part in the adjustment.

A. Various reasons play a part in the rates. I merely take the information which I have from the shippers, and place it before the lines. The lines make their rates.

Q. Let me ask, Mr. Andrews, do you regard that adjusted rate of $2 to Antwerp-Rotterdam as a reasonable rate?

A. Well, my opinion would not matter.

Q. I understand, sir, your opinion is subject to test as [fol. 1125] to credibility, but I am asking for it.

Mr. Hupper: I object to its being pursued further on this line. He says he only lays the facts before other people, who decide what the rates shall be.

Mr. O'Connor: He testified yesterday that the rates of the conference were reasonable. Now he is being asked as to a particular rate.

By Mr. McGovern:

Q. Very well, let us pass the last question, Mr. Andrews, and ask: At the time that the rates, the Antwerp-Rotterdam rate, was $2.90, what was the rate to the United Kingdom

ports? You are also secretary of that conference, are you not?

A. Chairman and secretary.

Q. Chairman and secretary.

Mr. Hupper: I object to bringing in other conferences here. We have got far afield from 684 already.

Mr. O'Connor: Well, the exhibit in evidence shows he is chairman of four conferences.

Mr. Hupper: What difference does that make.

Mr. O'Connor. He is also chairman of a super conference; they are all tied together.

Examiner Robinson: The great objection go going into another conference is the fact that the conditions may be so dissimilar, and unless you get all those factors, your [fol. 1126] comparison means nothing.

Mr. McGovern: There is no argument about that, Mr. Examiner; but over our objection, this question of rate comparisons has been injected into the proceedings. I do not propose to pursue it, I will tell you, beyond this one point, but I am asking——

By Mr. McGovern:

Q. With regard to the same commodity, moving, incidentally, on the same lines, is that not true, Mr. Andrews?

A. Not correct.

Q. Well, the Cunard White Star serves both routes, does it not; it is in both trades?

A. Cunard is in both trades.

Q. And you are chairman of both conferences, are you not?

A. That is correct.

Q. Then I ask you, sir, at the time that the rates from the North Atlantic ports to Antwerp-Rotterdam was $2.90, what was the same rate on the same commodity, leaf tobacco, to United Kingdom ports?

Mr. Hupper: I object to his being asked as to this, having nothing to do with this case.

Examiner Robinson: He may go ahead and answer.

A. I believe the rate was $2.

By Mr. McGovern:

Q. The rate that you subsequently made to Antwerp-Rotterdam?

[fol. 1127] A. We made a rate to Antwerp-Rotterdam of $2, effective November 1, 1948.

Q. I take it, Mr. Andrews, that in introducing your exhibit this morning showing certain comparisons between the Isbrandtsen tariff and the conference tariff, you did not mean to leave the implication on the face of the record that the only competition in that trade was between Isbrandtsen and the conference lines?

A. My exhibit only referred to Messrs. Isbrandtsen.

Q. That is right, but it is a fact, is it not, that in the last year, other independent competition has come into the trade?

A. Oh, yes.

Q. And you have no reason to suppose, I gather, that any of those rate adjustments reflected on the Isbrandtsen tariff were made to meet one type of competition rather than another?

A. I don't know why Messrs. Isbrandtsen made their rate reductions.

Q. From what papers you have available, Mr. Andrews, would you be able to give us the same kind of breakdown of sailings for 1947 as you did at the outset for 1948?

A. Well, you are going back into past history, some 12 years ago.

Q. No; 1947.

[fol. 1128] A. Oh, 1947. I thought you said '37.

Q. '47.

A. I think we could.

Q. Specifically, could you give us Black Diamond for 1947?

A. I would have to check it. I haven't any of the records here. It goes back in the accounting department.

Q. Could you undertake, without too much inconvenience, to get the sailings of the various lines in the conference for 1947?

A. I think I could do that readily for you.

Q. That is the year for which you filed the figures in the District Court.

A. If you don't give me too many requests I will be able to comply with these. I have got a big job on my hands right now, with 120 pages of tariffs.

Q. I appreciate that, sir, and I am just asking one point on that. Did you personally, Mr. Andrews, make any representations to the Department of Agriculture with regard to the Department undertaking to sign a conference contract?

A. No, I have not.

Q. You have never approached the Department to solicit their signature to a conference contract?

A. Not to sign a contract, but they may have been on our mailing list and the girls, in making up the contracts, may [fol. 1129] have sent them to them. But as I just testified, the Department of Agriculture gets a copy of our tariff and it specifies right in there, they don't have to sign contracts to get the benefit of the contract rates. If a contract was sent to the Department, it was just one of those slips, in screening the various shippers.

By Mr. O'Connor:

Q. You remember when UNRRA ceased and Agriculture took over in exporting agricultural products abroad?

A. I have some recollection of it.

Q. Do you mean to say that you did not visit the Department of Agriculture and ask them to send all their goods by your conference lines?

A. That wasn't the question, Mr. O'Connor.

Q. Well, I am asking you the question now.

A. Yes, I will answer the question. I did visit with the Department, and I did ask them for an undertaking to patronize the conference lines, yes.

Q. The conference lines only, you mean, don't you?

A. I am only talking—I can't speak for non-conference lines.

Q. You mean you were there and talked to several people, didn't you?

A. I only talked to one at a time.

Q. One was a Colonel, wasn't he? What is his name?

[fol. 1130] A. Colonel Warlick.

Q. Do you know that I followed you in there and also talked with him?

A. I had no idea that you did.

Q. Well, you know that the conference lines did not tie them up, don't you?

A. I don't believe that we signed any agreements or tendered any agreeemnts to them.

Q. Well, they did not make an oral agreement with you, either, did they?

A. No. We asked them, in consideration of rate considerations, in return that they would use the conference lines.

Mr. Hupper: I suppose you were copying Isbrandtsen on that, weren't you?

Mr. O'Connor: They were ahead of us that time.

The Witness: That must be the first time, Mr. O'Connor.

By Mr. McGovern:

Q. Do you recall, Mr. Andrews, the exchange of correspondence that you had with Mr. Tibbott, a copy of Mr. Tibbott's letter being in evidence?

A. I have no recollection of it.

Q. And do you recall that Mr. Tibbott pointed out that you require a shipper to ship all of his commodities ex- [fol. 1131] clusively by the conference in order to obtain a lower contract rate on a single commodity might, in his judgment amount to discrimination under the Act?

A. I think he said substantially that, and that was more or less in reply to a letter—that is just talking from memory now—in which I sent him the temporary forms on rubber tires and certain other things, because at that time we were still working on our contract form, our regular, standard, contract form.

Mr. Hupper: Mr. McGovern, you are referring to the letter that is in evidence?

Mr. McGovern: I am, Mr. Hupper, yes.

Mr. Hupper: What is the exhibit number on that?

Mr. McGovern: Number 10.

Mr. Hupper: Thank you.

The Witness: May I take a look at that?

(Inspecting document.)

By Mr. McGovern:

Q. Let me ask you, Mr. Andrews, do you regard it as discriminatory to require a private shipper to sign a contract, an exclusive contract, in order to obtain the contract rate when, as a matter of fact, you do not require the Government to sign such a contract in order to obtain the contract rate?

Mr. Hupper: I object to that question. It is perfectly [fol. 1132] apparent from the Government's own testimony here, by the Department of Agriculture, gentlemen, that they don't make contracts. If they cannot make contracts and don't want to, that cannot be the basis of discrimination as concerns somebody else.

Examiner Robinson: Well, he may answer.

Mr. McGovern: That is perfectly all right, but I want the witness' view as to that situation, Mr. Hupper.

Mr. Galland: I think the question is beyond the scope of the issues in this case.

Mr. Hupper: Well, it is a legal question.

Examiner Robinson: It may not have any bearing, for the simple reason that there may be some policy of law. I don't know, but he may answer it if he wants to.

Mr. McGovern: I just want the witness' view.

The Witness: I don't think it would be discriminatory, for the reason not only this Government, but other sovereign governments in Europe are not in a position to sign contracts.

By Mr. McGovern:

Q. Why is that, Mr. Andrews?

A. You will have to check up with those countries. I couldn't tell you why.

Q. When you were approaching the Department of Agri- [fol. 1133] culture in this connection were any reasons advanced to you as a ground for the Department's refusal to sign a contract?

Mr. Hupper: He did not ask them to sign a contract.

Mr. O'Connor: Well, now, wait.

Mr. Hupper: He has testified that. Let us keep that clear.

Mr. McGovern: Well, I think the witness and I could probably get on pretty well if we didn't have so many interruptions.

Mr. Hupper: All right, but let us not distort the record.

By Mr. McGovern:

Q. Did the Department of Agriculture ever assign to you any reason for its inability or unwillingness to sign a contract?

A. They may have, but I don't recall it. They may have given some reasons to me at the time.

Q. Do you know of any provision of the Shipping Act of 1916 that authorizes a different rate to the Government from that quoted to a private shipper for the same commodity?

A. Offhand, no.

Mr. Hupper: I think there is some provision about that.

Mr. Malatzky: Off the record.

(Discussion off the record.)

[fol. 1134] By Mr. McGovern:

Q. I think you have indicated, Mr. Andrews, that you did not solicit a contract from the Department of Agriculture?

A. No, I have not. I just testified that they may have been on our mailing list and it may have slipped through, for the reason that clerks did not screen it; but it was very clearly stated in the tariff that the contract rates would apply to any governmental agency or department without their signing a contract trade agreement.

Q. But did you ever seek to ascertain whether the Department would enter into a sort of an oral or gentleman's agreement with you that they would ship exclusively by conference lines?

A. I think I did discuss that with Colonel Warlick at the time Mr. O'Connor referred to following me in there.

Mr. Hupper: He was on everybody's trail.

By Mr. McGovern:

Q. Quite apart from Mr. O'Connor's following you in, Mr. Andrews, what was the substance of your attempted arrangement?

A. Well, I think they were after a reduction in some commodity, I can't recall at the moment, and I asked them, in consideration of a reduced rate and other conditions, could we get an undertaking that the Department would ship on the conference lines, substantially that.

Q. What was the response you obtained, sir?

A. I don't think the Colonel was agreeable.

[fol. 1135] Q. Did he advance any reason for his disagreement?

A. Well, that is some time ago. I may have a record in file or a memorandum, but the essence of it is, he did not go along.

Q. What was the time of this conversation, in your best recollection?

A. Oh, I haven't any idea.

By Mr. O'Connor:

Q. Is it not a fact, Mr. Andrews, that when you walked away from your first visit, you thought you did have such an oral understanding, and it was later on that that was——

A. No, I don't think so, Mr. O'Connor.

Examiner Robinson: Off the record.

(Discussion off the record.)

Examiner Robinson: On the record.

By Mr. McGovern:

Q. You have indicated, Mr. Andrews, that the Department of Agriculture might have received a copy of your formal shippers contract that was sent out in the mails about October 1st to the trade generally?

A. They may have, but I wouldn't be sure.

Q. Were those shipper agreements sent out rather broadly to the trade at that time?

A. Well, very definitely. I tried to cover the whole trade, [fol. 1136] both here and abroad.

Q. How many of those contracts were returned signed?

A. You mean in numbers?

Q. In numbers.

A. Oh, if I were *harrassing* a guess, I would say about 3,000.

Q. And that, I assume, was prior to the issuance of the District Court's injunction; or were they still coming back after that?

A. They were still coming back.

Q. In the mails, more or less?

A. That is right, from the other side.

Q. How many were returned unsigned, if you can estimate it?

A. That is a very hard — to say, for the reason that you have got to appreciate our mailing list was made up pre-war, and a number of those agreements came back, the party had moved, no further mailing address, or cannot locate, quite a bit of them.

Q. Well, then, let me ask you, how many came back with a definite indication from the shipper involved that he declined to sign the conference contract?

A. That I couldn't tell you.

Q. How many of these were sent out in the first instance, if you can estimate it?

A. I would say probably about 4,500 or 5,000.

[fol. 1137] Q. Between 4,500 and 5,000?

A. I am just making a guess.

Q. Of which you estimate approximately 3,000 came back signed?

A. I think that is a fair number.

Q. Of those 3,000 that were signed, are you in a position to estimate what the relevant importance of the shippers who signed the contract was in the trade generally?

A. No; I never did analyze them all.

Q. You have no idea whether you had the larger shippers or smaller shippers or——

A. I cannot tell you, because when the restraining order came in, we set aside a big cabinet to — them all in, and they have been in there ever since.

Q. None of those contracts, I take it, ever actually went into effect by virtue of the operation of the District Court's injunction?

A. Very definitely not.

Q. You have indicated in connection with the case involving the Wayne Pump Company, Mr. Andrews, that where a commodity or product is ordered f.a.s., it is the conference view that the commodity passes the control of the buyer and does not then operate under the seller's exclusive patronage contract, is that right?

[fol. 1138] A. If the shipper does not control his business, he just does not control it.

Q. Well, now, I would like to direct your attention to some correspondence between yourself and Mr. F. J. Quackenbush of the Export Division of the Joseph Turner Company in Ridgefield, New Jersey. May I show you those two letters?

Mr. Hupper: Those letters are in evidence?

Mr. McGovern: They are not in evidence yet, and they have not been marked for identification yet.

By Mr. McGovern:

Q. Would you show those letters to your counsel, please, Mr. Andrews?

A. That deals with another trade, the Mediterranean trade. (handing document to counsel)

Mr. Hupper: I object to any testimony or letter in relation to them dealing with trades other than those covered by this docket, as going far afield for no purpose.

Mr. McGovern: May I point out, Mr. Examiner, that when we were talking about CARE, for example, the witness testified that negotiations there was not confined to the North Atlantic conference, but in fact was tied in with your trade to and from the Mediterranean area. Is that not the case?

Mr. Hupper: But that is not CARE, that you are re-

[fol. 1139] ferring to.

By Mr. McGovern:

Q. You have the same type of shipper contracts in the Mediterranean that you have in the North Atlantic?

Mr. Hupper: I object to questions about another trade.

Mr. O'Connor: Well, in the respondent's case which they

put on, by calling the witnesses Isbrandtsen and Crinkley, they touched on the Mediterranean trade and the Far East trade, and so forth.

Mr. Hupper: We did not touch on it in any sense that you gentlemen are trying to touch on it now.

Mr. McGovern: Mr. Examiner, as I indicated before with regard to the United Kingdom trade, I am not here concerned with the actual operation of the Mediterranean trade; I am merely trying to test this witness' credibility as to what is the practice of the conference, primarily in the North Atlantic; that is what I am concerned about.

Examiner Robinson: Well, I am very grateful for all this edification, but I since I have not seen the letters, I don't know what they are about.

Mr. Hupper: It is dealing with an entirely different set of charriers.

Examiner Robinson: You have not offered them in evi-
[fol. 1140] dence?

Mr. McGovern: Not yet, no.

Examiner Robinson: Then I will have an opportunity to inspect them.

By Mr. McGovern:

Q. Mr. Andrews, in the case referred to in the letters which I have shown you, which I have not tendered in the evidence, apparently the conference took the position that regardless of whether the shipment was f.a.s., fob, or c.i.f., if the seller in this country had a conference contract, had to abide by its terms, even with regard to f.a.s. and f.o.b. shipments, is that not the case?

A. The Mediterranean lines may act altogether different from the lines in the North Atlantic trade. I follow the dictates of the member lines in that particular trade.

Q. Well, now, Mr. Andrews, you are chairman of both conferences, are you not?

A. I am.

Q. And I assume that——

Mr. Hupper: I object to any examination of the chairmanship of any other conference than the one involved in Docket 684.

Examiner Robinson: Go ahead. Let us see what happens.

[fol. 1141] By Mr. McGovern:

Q. I assume you have some difficulty keeping your right hand, as chairman of the North Atlantic c-nference from knowing what your left hand, as chairman of the Mediterranean conference does?

A. I think that is a reasonable statement. (laughter)

Q. Is it not the fact that the conference, both conferences, and primarily the North Atlantic conference, seeks to control all shipments regardless of whether they move f.a.s., f.o.b., or c.i.f.?

A. We will make agreements with shippers or consignees or receivers.

Q. I understand you will, but when you make agreements with a shipper in this country and ship f.a.s., is it your view that if the movement is f.a.s., your contract has no application to it?

A. If the shipper controls that business, and has received instructions from that receiver, to ship under his agreement, I presume it is governed by his agreement.

Q. I am, of course, assuming the case where the foreign consignee, the buyer, instructs the shipper who has the contract with you to ship via an independent line. What is the attitude of the North Atlantic Freight Conference with regard to such a case?

[fol. 1142] A. Well, take the concrete case of the Wayne Company.

Q. Yes?

A. The Wayne Company, after corresponding with them, told us that they did not control the routing of this consignee's business, and gave us advice to that effect, and incidentally told us that the business of that receiver was being handled by another forwarder other than the forwarder of the Wayne Company; and that is all that happened on that case.

We finally sent an agreement on to that receiver in Holland, and he subsequently signed the agreement, and as a matter so advised the Wayne Pump Company. That was in 1938, '39.

Q. Was the reduced contract rate applicable to that shipment?

A. We did not reduce any rate, my recollection is. I

think he signed the agreement at the rate. I would have to check back the rates. You were only talking about the contract form.

Q. Well, now, your representations as to the position taken by the Wayne Pump Company are precisely the position taken by the Mr. Quackenbush here, are they not?

Mr. Hupper: I object to questions as to Mr. Quackenbush.

Q. —with reference to the commodity moving?

Examiner Robinson: I sustain that, because I don't know anything about Mr. Quackenbush up to this point, except what has been going across the table.

[fol. 1143] Mr. McGovern: Well, Mr. Quackenbush——

Mr. Hupper: I object to that being read in.

Mr. McGovern: I have read nothing in.

Mr. Hupper: All right, then make no statements about him please.

Mr. McGovern: I have not tendered these documents into evidence. When I do, then you can make an appropriate objection.

As I indicated before, Mr. Examiner, my only intention here is to test the witness' credibility. If I tender these documents as evidence, then I think those questions may well be posed as to the admissibility of the letters.

Mr. Hupper: I say that you have no right to deal with tariffs in other conferences, where the situation is entirely different and the lines acting are entirely different from the ones under question.

Mr. McGovern: Mr. Hupper, in your own examination of your own witness, Mr. Isbrandtsen, you took him all over the world.

Mr. Hupper: I did not take him all over the world. He tired to take me all over the world.

Mr. McGovern: I think the record will show that the taking was primarily at your instigation.

Examiner Robinson: Let us have a short recess so we [fol. 1144] can cool off.

(A short recess was taken.)

[fol. 1145] Examiner Robinson: All right.

Mr. Hupper: Mr. Examiner, I will like to suspend the

examination of Mr. Andrews at this moment and place on the stand Mr. James Sinclair.

Examiner Robinson: My recollection was that we had not finished cross-examination.

Mr. Hupper: That's right.

Mr. McGovern: But I am quite agreeable to Mr. Hupper's desire to interrupt this examination.

Mr. Hupper: He has to leave town Monday morning.

(Witness excused.)

JAMES SINCLAIR was sworn and testified as follows:

Direct examination.

By Mr. Hupper:

Q. Mr. Sinclair, what is your business?

A. President of the Luckenbach Steamship Company.

Q. How long have you been such?

A. Since May 1, 1943.

Q. Before that, what was your business?

A. I was chairman of the Trans-Atlantic Associated Freight Conferences.

Q. Were you Chairman of the North Atlantic Continental Freight Conference?

A. Yes, sir.

[fol. 1146] Q. That is the Conference that operates under Agreement 4490, isn't it?

A. Yes, sir.

Q. How many years were you Chairman of that?

A. I think from 1927.

Q. Before 1927, what had been your business?

A. I was with the Shipping Board, Traffic Department, in New York.

Q. During what period of years?

A. December 1919 until I joined the Trans-Atlantic Conference.

Q. Were you in the Navy during the first World War?

A. Yes, sir.

Q. During your Chairmanship of the North Atlantic Con-

tinental Freight Conference, I take it that you were acquainted with the several member lines?

A. Yes, sir.

Q. Are you still acquainted with the members of that Conference?

A. Yes, sir.

Q. Do you keep in close touch with shipping affairs generally?

A. I endeavor to.

Q. I showed you, Mr. Sinclair, when you came in here, a copy of the statement of Mr. Turner, of the Department of [fol. 1147] Agriculture, and asked you to read the same. Did you do so?

A. Yes, sir, I read it rather hurriedly.

Q. I directed your attention particularly to the final paragraph thereof on page 7, did I not?

A. Yes, sir.

Q. You came in here at my personal request, did you?

A. Yes, sir.

Q. During the time you were Chairman of this Conference, or any part of that time, did the members of the Conference use the so-called Conference rate system?

A. They used it practically all the time that I was Chairman of the Conference.

Q. And how many years was that that they used it, according to your recollection?

A. Sixteen.

Q. I beg pardon?

A. Sixteen.

Q. Sixteen years?

A. Yes, sir.

Q. Did you, yourself, have anything to do with the formulation of that contract form?

A. I had considerable to do with it.

Q. And as Chairman of the Conference at that time, during the time that the contract rate practices were in effect, will you tell us your understanding of the purpose of that [fol. 1148] system?

A. The main purpose of the system was stability as between Conference members and relationship with shippers and the shippers' assurance of having stabilized rates in the making of prices for export and import.

Q. That was the main purpose of that system, was it?

A. That was the main purpose of it.

Q. What was your experience during those years as to the attitude of shippers generally with respect to that contract as reflected by their expression of desire to have the same?

A. The shippers seem to generally—took to the contract system favorably. Associations of shippers negotiated such contracts with us on behalf of the members. After having been used to it for a number of years, they really seemed to desire the contract.

Q. Did you, during your experience there, encounter any particular opposition on the part of the shippers to that contract rate system?

A. No, we occasionally ran up against the Traffic Manager who wished to show up pretty well, he thought, with his company, but he was one of the fellow- that liked to have his cake and eat—, and as a rule he wound up by making it very difficult for his sales department, and usually for his company when they broke down the stability that had formerly been enjoyed.

[fol. 1149] Q. What do you say of the benefits, or otherwise, of the contract rate system as concerns the maritime policy of the United States?

A. I think the contract rate system has been looked into very thoroughly by representatives of the United States Government regulatory bodies and has been found to be of benefit to the commerce of the United States.

Q. Do you, yourself, see any particular objections to the system?

A. No. The system was only found to be objectionable when it was used reportedly to prevent an applicant from joining the Conference. The regulatory bodies have, in all cases, held that it cannot be so used.

Q. Well, as things are under the Conference agreement, other carriers have the right to come into the Conference if they so choose, do they not?

A. Oh, yes, on equal terms.

Q. On equal terms with other lines that are already members of the Conference, you mean?

A. Yes, sir.

Q. And once they come in, they are entitled to participate in these contracts, are they not?

A. They are.

Q. Is that fair or unfair, in your opinion?

A. I think it is very fair.

[fol. 1150] Q. If they choose not to come into the Conference, I take it they are not entitled under the Conference setup to participate in those contracts, is that correct?

A. That is correct.

Q. That was the same point of view that prevailed in your day as Chairman as prevails now, is it?

A. Yes, sir.

Q. Mr. Turner, in his—before I come to that—kindly strike that.

Can it be said broadly, as concerns the Conference and its existence under Section 15 of the 1916 Shipping Act, that it corresponds with the shipping policy of the United States as developed by experience extending back to the time that the Alexander Committee made its report—I think it was in 1914?

A. Yes, the 1916 Act was the result of the investigation under the Alexander Committee.

Q. Have you familiarized yourself to some extent with the result of the Committee's investigation and its report?

A. I had at one time gone through most of the Alexander Committee Report.

Q. So you consider yourself fairly familiar with the results of that extensive investigation, do you not?

A. I think so.

Q. Have you any opinion that you can express as to any [fol. 1151] better method of carrying forward the maritime commerce of the United States, whether by means of American vessels or foreign vessels than that which has been developed through the Conference system?

A. It is my opinion that the Conference system has been, and is, the best thing that has been devised for the purpose.

Q. Do you say that because you consider it is a method under the supervision of the Maritime Commission whereby common carriers in international water trade can live together in comparative——

Mr. McGovern: May I suggest, Mr. Examiner, that we have been very tolerant about leading questions, but I think

that counsel is beginning to lead the witness by several lines, and I doubt if the witness can keep up with that.

Examiner Robinson: Well, I recall very distinctly that same thing was hurled at Mr. O'Connor.

Mr. McGovern: Yes, but Mr. O'Connor was on cross-examination. That is a different matter.

Examiner Robinson: I appreciate that. We are not strictly in court, and if there is anything particularly you want to object to, all right. Technically, you are correct, but——

Mr. McGovern: I am not trying to be captious, but I think we have been very indulgent, and we are very in-[fol. 1152] terested in Mr. Sinclair's testimony, not Mr. Hupper's.

Mr. Hupper: Well, we have got an intelligent witness, and I want to get through quickly.

Now, will you kindly read the first part of my question, before I was interrupted?

(Partial pending question was read by reporter.)

By Mr. Hupper:

Q. —peace, by which I mean to say the charging of the same rates and under uniformly agreed on and practiced regulations, and other attributes of water commerce, is that correct?

A. My view of the Conference is that it is very necessary in this international trade, otherwise there would be complete chaos. It is an opportunity for carriers to get together on a voluntary basis, the carriers have always gotten together on that basis whether there was outside competition or not, and it provides a means of making rates, making rules, which all of the carriers can live together under and enjoy competition by fair methods.

Q. What do you say as to the place of the contract rate system in the Conference setup?

A. I think it helps attain that end, and it also gives the shipper, once the rate has been agreed with the shipper, a sense of security in knowing that he can go ahead with his sales.

[fol. 1153] Q. When you were with the Conference, was it a principle that was carried out that whenever rates were

reduced, the contract holders had the benefit of the reduced rates?

A. Always were assured of the benefit of any reduced rates.

Q. And for the period that the contract applied, I take it they were assured that the rate could not be increased?

A. That is correct.

Q. In the testimony of Mr. Turner, the statement was made on page 7 under subdivision (c) "that the exclusive patronage feature of the contract is objectionable and should be eliminated because it appears to be designed to monopolize water-borne transportations employed in carrying on the foreign agricultural commerce of the United States." Do you agree with that statement?

A. No, I completely disagree with it. He seems, whoever wrote that, seems to have lost sight of the keystone fact.

Q. Now, will you go on and give us your views on that subject?

A. Well, the keystone of the Conference in relationship to the shipper is that there is a mutual interest between shipper and carrier, and if the shipper is placed, by reason of rate-making on the part of the Conference, in position where he can't ship, of course, the carrier doesn't get the goods. So there is naturally a common interest, and whether the Conference sometimes makes a mistake, or whether the [fol. 1154] shipper at times may be a little too greedy, which may cause differences of opinion, basically the carriers in the Conference and the shippers can have but one objective and that is a common one.

Mr. Cockrum: Excuse me. I didn't get the last part of that answer.

Examiner Robinson: Read it.

(The last part of the answer was read by the reporter.)

Mr. Cockrum: Common one?

The Witness: One common to both, I mean.

By Mr. Hupper:

Q. Well, when you say "purpose common to both," what do you mean?

A. I mean that the shipper is interested in doing as much export or import business as he can, and the lines applaud that.

Q. In other words, the movement of cargo is what constitutes commerce?

A. Constitutes commerce and is the life blood of the carrier.

Q. Therefore the carrier must, in the nature of things, be opposed to monopoly, must it not?

A. Very definitely.

Q. Speaking now of the time when you were Chairman of [fol. 1155] this North Atlantic Continental Freight Conference, was it the purpose of the member lines thereof, and observed by you, to destroy the business of carriers who didn't choose to join the Conference?

A. No. That is a very costly practice to indulge in,—chaotic competition. The object was to keep the business that had been stabilized and to share it between those who saw fit to become members of the Conference; that if there were any shippers who desired to ship on the non-conference lines, it was to be expected those shippers would not also enjoy the same rates as those who had seen fit to patronize the Conference lines exclusively.

Q. Well, the point of view was that these lines who were joined together in Conference were devising a means of peace as between themselves and in support of that purpose they devised a contract system which would give them as much business as they could legitimately get, is that it?

A. That is correct. It was not a—it was more of a protective weapon for them rather than a fighting instrument against the non-line. The Conference contracts were effective in Conferences that had never known the outside competition and I don't recall of any instance where the contract system itself ever put a non-Conference line out of business.

Q. Well, a non-Conference line, or any line, that does not enter the Conference has the right to make whatever rates [fol. 1156] it pleases, does it not?

A. Absolute freedom of action, apparently.

Q. There is no practice conducted by the Conference lines, at least during the period when you were chairman, to re-

strict in any way the number of sailings that the non-Conference or independent line might have as between any ports, was there?

A. That was not a Conference practice, no.

Q. Do you know whether any such practice is now indulged in by the members of this Conference?

A. I know of none.

Q. You haven't heard any criticism on that point, have you?

A. No, sir.

Q. On the point of your Chairmanship of this Conference, did you have dealings with Government agencies from time to time?

A. Yes, sir.

Q. Do you recall, roughly what those agencies were?

A. We dealt with the Navy, we dealt with the Army.

Q. The Department of Agriculture?

A. The Department of Agriculture at that time wasn't as much of a shipping agent as it appears to be now.

Q. Did you have some dealings with the Department of Agriculture that you recall?

A. Well, I have the unique distinction of being the fellow [fol. 1157] that was locked up in the Department of Agriculture Building one day when I got in the wrong room and they were making a crop report.

Q. How long did it take to get you released?

A. Well, I got out when they were through with the report, at three o'clock, and not before.

Q. Well, you didn't have any contract dealings with them, then?

A. No, my dealings at that time were of a cooperative nature. There was an effort to stop the pilfering which was occur-ing in furs, primarily, because of a Department of Agriculture ruling that the nature of the furs must be marked very legibly on the outside of the case, so they always picked the right kind of furs when there was pilferage. We finally had that changed by cooperation of the Department of Commerce, or Agriculture, rather.

Q. Well, now, you said you had had dealings during your Chairmanship with the Navy Department and the War Department, is that right?

A. That's right.

Q. In relation to the carriage of goods?

A. Yes. They weren't very heavy shippers.

Q. I beg your pardon?

A. They weren't very heavy shippers at that time.

[fol. 1158] Q. From time to time?

A. That's right.

Q. Did you request those departments, or either of them, to make contracts with the Conference lines?

A. I don't recall that I ever requested any Government Department to make a contract except once. That was a situation where the State Department in shipping furniture for people going abroad or coming from abroad, did it through an agency, and I believe we discussed with them the question of making a contract. It wasn't very large business, and I can't recall whether or not we actually made a contract with them. But I believe it was determined that that agency, not being a direct agency of the Government, would be free to make a contract.

Q. Were you ever in position as Chairman acting for the Conference members where Government agencies requested contracts from the members of the Conference for a contract?

A. Well, it is always customary for the Government to require the carrier to sign a contract if it wishes to get paid.

Mr. O'Connor: We are talking about the Conference, exclusive Conference contracts, aren't we?

Mr. Hupper: That is what I am asking about.

The Witness: Well, if I could explain that the situation, for instance, today is that you can't get Army business [fol. 1159] under a fixed Army agreed rate until you have a contract with the Army, not under one ship but——

Mr. O'Connor: That is not exclusive patronage contract; that is a contract for carriage of one carrier, isn't it?

The Witness: Yes, but if you don't have a contract with them you can't get any of the Army business. That is what I thought the question was.

By Mr. Hupper:

Q. Well, you say a contract with them. Is it just for one ship, or does it cover a period?

A. Oh, no, the Army makes a contract for a period in different areas at fixed rates.

Q. That contract that is thus made, is that exclusive of other people carrying——

A. (Interrupting:) Oh, yes. The foreign lines in the Conference, for instance, would perhaps not be given an opportunity to participate in that contract—be exclusive to American lines, and the rate would be the same, I believe, for all American lines to a given trade on the same type of business.

Q. Are you familiar with the question that is raised in this case, Docket 684?

A. Well, it is the same question that has always been raised, I think, by the party under the umbrella who wishes [fol. 1160] to stay under the umbrella.

Q. What do you mean by that?

A. Well, we have had it raised a number of times, and it is always raised, as a rule, by the non-Conference member who wishes the protection of the Conference lines taken away from them, and as a rule doesn't like to see the umbrella let down. Sometimes that happens.

[fol. 1161] Q. Well, by that do you mean that we should understand that the conference rate level is a sort of protection to carriers not in the conference so that they may freely charge a lower rate with fairly certainty that the conference rate will not be rapidly or fairly constantly lowered in competition with them?

A. Oh, I think it is common knowledge that for general purposes the rate practices of the non-conference lines are differentially below the conference.

Q. Well, that is what you mean when you speak of an unbrella, you are referring to the conference rates, I take it?

A. That is right.

Q. The testimony of the gentleman from the Department of Commerce, Mr. Turner, was to the general effect that the commerce of the United States, according to his judgment, was best served by fairly constant reduction of shipping rates? Do you agree with that opinion?

A. I do not.

Q. Why not?

A. Because it would be to a very chaotic state of affairs.

When rates are cut to an unreasonable level, which they sometimes are, even though there is service available, it is sometimes cheaper than tieing up, it has its effect in prices, [fol. 1162] competition from foreign countries will meet that price and when the war from Point A to Point B is over, it doesn't necessarily mean that the people from Point C to D are ready to adjust their prices, and that would put the exporter from the United States at a serious disadvantage for the future.

Mr. Cockrum: Well, Mr. Examiner, before another question is answered along that line, I would like to get the record straight with respect to the testimony of Mr. Turner on that particular point. Mr. Turner did not testify, I think, that rates generally should be reduced to unreasonably low levels. I think the record will very clearly show that.

Examiner Robinson: He did not say that, he said with a reasonable profit.

Mr. Cockrum: That's right. And the record at this time should not be distorted to show otherwise.

Mr. Hupper: I recall what he said.

Mr. Cockrum: Well, the record will speak for itself.

Mr. Hupper: My question was in accord with what he says. I am not testifying here—yet.

By Mr. Hupper:

Q. Mr. Sinclair, international commerce by water pre- [fol. 1163] sents a fairly complicated picture, does it not?

A. It does.

Q. Isn't commerce to and from this country subject to or affected by a considerable extent commercial considerations that may prevail exclusively as between foreign countries or may relate in part only to this country?

A. Yes, sir. The commodity really must be studied on its own. They all have many angles—not all similar.

Q. Really, each commodity must be related, must it not, increasing in a broad sense, to various trade routes of which there are many and the necessities and desires of the people in very many countries other than those here in the United States, is that correct?

A. That is correct.

Q. Now, do you know anything more complicated than that picture in your experience as a shipping man?

A. No, I think the international trade is one of the most complicated, but most interesting businesses we have.

Mr. Hupper: Thank you, Mr. Sinclair. We are ready for cross-examination.

Mr. O'Connor: Well, Mr. Examiner, that has just taken 31 minutes. What about this cross-examination? We have got quite a lot here, we want to open this umbrella a little higher, and can't do that in ten minutes.

Examiner Robinson: You can take as long as you [fol. 1164] want.

Mr. O'Connor: What I mean, how long are you going to sit today?

Mr. Hupper: I might say that Mr. Sinclair has to leave town Monday morning.

Mr. O'Connor: You have taken 31 minutes.

Examiner Robinson: Go ahead. I will give you all the time you want.

Mr. O'Connor: I take it you want to adjourn at 4:30.

Examiner Robinson: I am ready to suit everybody's convenience. I will go in the opposite direction and sit longer if you so desire.

Cross-examination.

By Mr. McGovern:

Q. Mr. Sinclair, the Luckenbach Lines were in receivership, were they not?

A. In receivership?

Q. Yes.

A. Not that I know of.

Q. You became president of the Luckenback Lines since May 1, 1943, is that correct?

A. That is correct.

Q. Who controls the Luckenback Lines at the present time?

[fol. 1165] A. You mean, direct the policy?

Q. Yes.

A. I do.

Q. And where is the ownership of the Luckenback Lines?

A. The stock is with the executor of the Luckenback Estate—but what has that got to do with this case?

Q. Just answer my questions, please, and let's not get into a discussion here. Who is the executor of the Luckenback Lines?

Mr. Hupper: I am the executor and trustee, and I hold all the stock. It is in an estate. It is not yet in receivership and doesn't appear to be headed that way.

By Mr. McGovern:

Q. Now, you testified, Mr. Sinclair, did you not, that when you went with the conference system in 1927, I believe you testified, with the North Atlantic Continental Freight Conference, that you played a large part in the origination of that original contract form that was used by the conference?

A. That is right.

Q. What was the provision in that contract to deal with the case of a shipper who signed a contract and thereafter breached it by shipping with an independent?

A. I believe the provision at that time was cancellation, and future shipments at non-contract rate.

[fol. 1166] Q. Was there not also a retroactive provision that the shipper should be held liable for freight rates on all shipments under the contract at the non-contract rate?

A. There probably was that provision. I can't recall, but that provision probably was in there, but I don't believe it was ever exercised.

Q. In your judgment, was that a reasonable provision?

A. Well, it was reasonable, we thought, at the time,—the shipper got the benefit of the contract, and if he breached the contract, he shouldn't have the benefit of the contract in any particulars.

Q. Yes?

A. The only way you could overcome that was to put him back to the position he would have been, had he not signed the contract.

Q. Do you still believe as up to date that that was a reasonable provision?

A. Well, as it worked out in practice, we didn't exercise it, and I believe since that time the conference changed the contract form.

Q. Now, in Docket 648, are you familiar with the Commission's opinion in that proceeding?

A. Will you identify 648, please?

Q. 648 was the Pacific-European Coast Conference, Pacific Coast-European Conference.

[fol. 1167] A. You mean, that was the initiation fee?

Mr. Galland: That was part of it, but the contract rate system was the main thing.

By Mr. McGovern:

Q. It involved this very question. It dealt with the retroactive penalty of a shipper who violated the contract after having signed it?

A. I don't know.

Q. You don't know?

A. No.

Q. You indicated, did you not, that in your judgment the conference system and the contract system used in conjunction was objectionable, in your judgment, when it was used to achieve/ monopoly?

Mr. Hupper: He didn't say that. That is not the way he testified. You are turning the situation.

Mr. McGovern: The witness is perfectly capable, Mr. Examiner, of testifying.

Mr. Hupper: I am capable to see that the record is not in any way distorted.

Examiner Robinson: Let's start from scratch. What did you say, Mr. Sinclair?

The Witness: I said there was nothing monopolistic about the conference or the contract system. I said that the [fol. 1168] one objection to the contract system was when it was used as an instrument to prevent people who desired to get into the conference from joining, and that subsequently either the Commission had made enough rulings on that to discourage any conference from attempting to continue their practice.

By Mr. McGovern:

Q. Then if I understand your testimony, it is that you yourself, I take it, regard the use of the contract system in conjunction with the conference system objectionable for ac-ess to the conference if not available to an independent, is that right?

A. You mean, conference members?

Q. Yes, where conference membership is not available to an independent.

A. I have always felt that way.

Q. You have always felt that way? Well, now, why do you feel that that is objectionable?

A. Because this is an open forum, a voluntary organization, you should let him in. If he can live by the rules, it was always my opinion he could live without the rules a lot better—it takes a stronger man to be in the conference than outside of the conference, I can assure you.

Q. I take it, then, that your objection in the case where you have a conference in which membership is not open, I [fol. 1169] take it your objection goes to the fact that when such a conference uses the contract system the use of the system has the effect of driving the independent out of the trade, is that it?

A. I testified it had never driven any independent out, to my knowledge.

Mr. Hupper: That is not this conference.

Mr. McGovern: I think the witness is capable of answering.

Mr. Hupper: All right. I insist you stick to the record, and not bring in something else.

Examiner Robinson: He has answered it.

Mr. McGovern: Can we have the witness' answer read back, please?

(The reporter read back the answer.)

By Mr. McGovern:

Q. You also testified that in your judgment the use of the contract system in conjunction with a conference that does not open its membership to independents is objectionable, because the tendency is to monopolize the trade?

A. I did not say that at all.

Q. Well, then, what is your objection to the use of the contract system, whether the conference is opened or closed?

Mr. Hupper: He hasn't made any objection to it. He said——

Mr. O'Connor: We——

[fol. 1170] Examiner Robinson: I think maybe we can resolve this thing. I think you two are talking about different things. You are talking about monopoly in so far as membership in the conference is concerned on the one hand, and on the other hand you are thinking in terms of monopoly in terms of getting all the shippers joined in, isn't that it?

Mr. McGovern: No, I am not really thinking about that.

Examiner Robinson: That is the way it appears to me.

Mr. McGovern: No, I understood the witness to testify that he agreed in his judgment that the use of the conference system in conjunction with the contract system was objectionable in those cases where the conference was closed to membership to independent lines.

Examiner Robinson: Weren't you thinking in terms mainly of the independent being able to get into the conference? Wasn't that the basis of your remarks, or else I am mistaken?

The Witness: If I can put it clearly, and this has happened many times, if, before there were any independent lines at all you had all the business tied up and under conference contracts and a bona fide operator decided to come [fol. 1171] into the trade, I say that they should let him in the conference and permit him to participate in the contracts.

By Mr. McGovern:

Q. Well, supposing they denied admittance to him. Is it your judgment that the effect of the contracts would be to exclude him?

A. Let's not suppose—you asked me for my opinion as to what they should do. I will tell you, and I have always held that belief. I wasn't always su-tained, but that has always been my belief.

Examiner Robinson: I think you are confused on that.

Mr. McGovern: No, I am not confused.

Examiner Robinson: Perhaps I am.

Mr. McGovern: You may be, Mr. Examiner, and possibly the witness is, but I am not.

The Witness: I am not.

Examiner Robinson: That leaves me out in the cold.

Mr. McGovern: I am still trying to find out what is the basis of your objection. I understand you to say it is objectionable.

Mr. Hupper: He has not said it was objectionable.

Mr. McGovern: Let me ask the question, then——

Mr. Hupper: Go ahead. You have asked it three times.

[fol. 1172] By Mr. McGovern:

Q. In your judgment, Mr. Sinclair, is it objectionable for the conference to employ the contract system in a trade where the conference is not open to the membership of independent lines that wish to join?

A. I would answer that by saying that in my opinion there is no conference that is not open, because the Maritime Commission will not permit it to continue if it remains closed.

Q. But that is not the question.

A. Well, that is the answer.

Q. The question I asked you is whether or not the use of the contract system by a conference which does not open its membership to independent lines is objectionable in your judgment?

A. I can't visualize the conference you speak of, because that situation cannot exist.

Q. Now, do you mean to say that that situation didn't exist repeatedly before the Maritime Commission in recent years compelled thosuce conferences to open their membership?

Mr. Hupper: Well, we are talking here about this conference, Mr. McGovern. It is wide open. We don't have to go back in history eight miles.

Mr. McGovern: I am not talking about what you have in mind or may not have in mind. You brought this matter up. You asked the witness whether he agreed such a situation [fol. 1173] was objectionable. I understood you to testify you did.

Mr. Hupper: He told me about, he said in answer to my

question the situation had existed many years ago, but it has been corrected.

Mr. McGovern: I asked him whether he thought those situations were objectionable.

The Witness: I told you that I always felt and I still feel that the conference should be open to people, bona fide owners or operators who wish to join.

By Mr. McGovern:

Q. Well, now, I understood that you advanced the stability and regularity of service as the principal virtue that in your judgment inheres in a conference?

A. I say it——

Q. Is that true?

A. If there is stability, that all will benefit. There will be as much cargo as possible generated, the carriers will operate the right number of ships to carry that cargo, there will be reasonable competition, and the shippers will get a better service.

Q. Yes. You say if there is stability.

A. And there will be stability if there isn't rate cutting.

Q. Now I am going in back of your stability in asking you [fol. 1174] whether you testified that one of the virtues in the conference system in your point of view is to achieve stability and regularity of service?

A. That is the purpose of it, to achieve stability.

Q. Yes. If a conference is open, however, as I understand you say it should be to every newcomer who desires to come into the trade, and obviously that desire will be greater in cases of lucrative trades, how do you achieve any stability or regularity of service where you have this constant increase in sailings and sailing dates available?

A. They all join under the voluntary rules where their conduct is the same.

Q. But nonetheless, you may, I take it, in your view from one time to another, have an increase in the number of lines participating from 10 to 14 to 18?

A. I would say today that the continental trade is horribly over-tonnaged.

Q. Does that make for stability in your judgment?

A. Yes, the shipper gets the same rate, he gets more service than he needs, but there is stability there.

Q. Now, maybe somebody is going to have to go down, maybe somebody will have to pull out, maybe somebody will have to cut down their individual ships?

A. I don't know, but there certainly is stability there.

[fol. 1175] Q. What do you mean by stability, then, when you admit that there is, as you say, "A horribly overtonnaging of the trade?"

A. It is.

Q. What is stability?

A. I don't think that the lines are getting enough business to maintain them.

Q. You don't think they are?

A. No.

[fol. 1176] Q. Since March 2, 1946, would you say that there had been a stable trade in this North Atlantic trade?

A. I don't know that there has been instability. I know that there has been a Conference. I know what the Conference contracts in for the purpose of stability, and I know that there was an injunction sought to prevent the use of the contracts, and I know that there is rate cutting in the trade.

Mr. O'Connor: Sought and obtained, you should have added, injunction sought and obtained.

The Witness: Obtained, yes.

By Mr. McGovern:

Q. Let me ask you, Mr. Sinclair, what factors for judgment in any given trade makes for instability?

A. The opportunist.

Q. Will you expatiate a bit on that?

A. Well, the line that plays a hit and run, he comes in, he sees an opportunity to cut the rate and get some business and has no serious intentions, perhaps, of remaining in the business if the trade folds—he will get out and go some place else. We have seen it happen many, many times.

Q. All right. Now, we have your definition of an opportunist on the record. Do you, by any stretch of the imagination regard Isbrandtsen Company as an opportunist?

A. I have many times regarded them as an opportunist.

[fol. 1177] Q. Isbrandtsen Company, as you may know, is known on this record to have maintained regular sailings in

this trade since '31, and certain regular sailings of not less than twice monthly since the latter of *of* 1933. Is that what you would call an opportunist?

A. You mean Isbrandtsen, or Isbrandtsen-Moller?

Q. I am referring to the Isbrandtsen Company and its predecessor company, Isbrandtsen-Moller.

A. I believe Isbrandtsen has succeeded in staying in the trade and offering service.

Q. He is not, then, in your judgment, an opportunist; he is not one who dashes in and dashes out?

A. He has been fortunate, naturally, that the umbrella has been held.

Q. Now, in your judgment, the thing that has kept Isbrandtsen in is the fact that the Conference has been holding this umbrella over his head?

A. I think there would be a lot falling by the wayside if there was terrific rate cutting in the trade which would result if everybody was on their own.

Q. Well, you did, did you not, indicate that there was an umbrella being held by the Conference over the head of the independents?

A. Yes, the independents are always quoting less than the Conference rates.

[fol. 1178] Q. Yes, but specifically, you did indicate that the Conference rate system amounted to an umbrella over the heads of the independents, did you not?

A. It does in that the independents quote less than the Conference rate.

Q. Well, would it not have been sound business judgment on your part when you were Chairman of this Conference to have folded that umbrella?

A. Well, that would have been rather chaotic, put lots of shippers out of business, as well as the carriers.

Q. If, in fact, the Conference system operates as an umbrella under which an independent like Isbrandtsen can take protection, why do you suppose he is so unwise as to bring this particular proceeding?

A. Why, he can, he has got a free market, he can hit at the traffic any time he wishes.

Q. Well, your view is, he has been sitting here, as you indicated, enjoying this Conference manna from the Conference heaven through the years, sitting under the um-

brella. You just simply record him as being indiscreet in now challenging the umbrella.

A. I didn't say that the contract system was the umbrella.

Q. What was the umbrella?

A. The Conference rates are the umbrella.

Q. But you indicated, did you not, that the contract sys-
[fol. 1179] tem was an indispensable part of the preservation of the Conference rate system?

A. Tends for stability as between Conference members.

Q. And I suggest to you that if it is an umbrella, in your judgment, do you suppose this particular complainant that is so badly advised as to challenge it——

A. (interrupting) I do not know who is advising him. I am not.

Q. The rates fixed by the Conference are, I take it, in your judgment, generally fixed at a level that will allow the high cost American operator to engage in trade at some profit?

A. No, that is like the question I had from Secretary Roper in the Department of Commerce, "How do you ma*d*e a freight rate?"

Q. That is a good question, Mr. Sinclair. How do you?

A. Well, I gave him a little example. I had just come back from Milwaukee where I had been interviewing brewers. They were trying to sell beer over in England, and they told me that they could sell it for 25 cents a can, shilling, it was at that time, and they told me what their problem was on commissions, and then they told me what their rate was and their cost of production, and we had 45 cents a hundred pounds, I think it was, left at that time for freight.

Well, we figured out whether we could put it in and
[fol. 1180] take it out. It was additional business, and so we decided to take it on. We said, "God bless you, go ahead and sell all the beer you can, and we will give you a rate of 45 cents, give you a contract."

Well, about the same time we got a request from the other side on Bass's Ale, that they wanted to sell it over here, 25 cents, and we found in that calculation that there was only 35 cents left, westbound, because there was a tariff here on Bass's Ale, and we figured it out, we figured we would get a little more than handling charges, and the

ships were coming back pretty light anyway, so we said, "God bless you, let's sell the Bass's Ale, all you can, in the United States, and the best of luck."

So we made a rate to meet the situation. The shipper has to do the best he can. If you can live under —, it is fine for everybody.

Q. All right, now, let's take the situation of the eastbound traffic where you made the 45 cent rate. Are you suggesting that there was any particular infallibility that attached to your judgment as to whether 45 cents was an appropriate — or not?

A. I believed the man, and I knew that we could carry it over and above handling costs.

Q. Yes, and suppose Isbrandtsen were to tell the same man he could carry it for 48 cents, or could carry it for 43 [fol. 1181] cents, what is there to indicate that your 45 cent rate is the standard against which the Isbrandtsen rate should be measured?

A. I went out and met the shipper, I met three of them, and they all told me this story, and I gave them a rate which was going to enable them on their terms to do business, and I thought if any business developed out of that, after giving them the assurance, either let them go, or if they want any business they ought to give it to the lines I represent. I shouldn't have Isbrandtsen coming in the next day and saying, "That is fine. I will take it for 43 or 41," or whatever 10 per cent under 45 cents is.

Q. Well, in Exhibit 13 put into evidence here, Mr. Sinclair, Mr. Andrews made a comparison between two rates, a Conference rate and an Isbrandtsen rate. I do not know what the commodity is, because it is not shown, but the Conference rate is 45 cents, the Isbrandtsen rate is 40 cents, and the exhibit shows that the Isbrandtsen rate is 11 cents under the commodity rate.

Examiner Robinson: Eleven per cent.

By Mr. McGovern:

Q. (continuing) 11 per cent, I beg your pardon, under the Conference rate. Now, are you able to say offhand which is the more appropriate and reasonable rate, the

Conference rate of 45 cents or the Isbrandtsen rate of 40 cents?

[fol. 1182] A. Well, of course, unfortunately that doesn't mean anything because that is in Exhibit 13 which is not in evidence and we don't know whether they are talking about comparable articles. That is the fallacy of it.

Q. Well, we will relate this back to your Milwaukee situation. You quoted 45 cents. Now, Mr. Isbrandtsen goes out and talks to the same people, hears the same problems, makes the same calculations you do, as to his cost, efficiency, and so forth, and he finds that he can carry it at a reasonable profit for 40 cents.

A. No, but the brewer told me that, "We have left here that we can pay to you 45 cents." Now, the brewer shouldn't attempt to gain on transportation costs. I am trying to help him out.

Q. I understand.

A. He should be willing to pay me what, in his opinion, is left for transportation.

Q. In other words, your theory is that the Conference lines charge all the traffic will bear, is that it?

A. Oh, that is a wicked term, but it isn't as bad as it sounds.

Q. It is precisely what you have just described.

A. Absolutely, and that is just exactly what he was willing to pay.

Q. If a brewer says, "I have got exactly 45 cents I can [fol. 1183] spare for ocean transportation," you say, "I will take it"?

A. He said, "Will you help me. That is all I can afford to pay." I said, "Fine, we will take it."

Q. Let us assume he could afford to pay 45 cents, is that any reason why he should pay 45 cents if, in fact, efficient and economic ocean transportation could be given him at 40 cents?

A. You mean after he had started to sell his business?

Q. Before he started to sell his business, while he was still exploring the possibility of the market.

A. Well, we are assuming a lot of things here. I think usually these things—after the business starts to move and I say that if the man accomplished the contract for the business at the rate which we negotiated with him, then

A. Well, the lines that have operated successfully in that trade were not subsidized carriers.

[fol. 1187] Q. Well, whether they were or they weren't, the purpose of the Ship Subsidy Act of 1936 was to subsidize high cost American carriage, was it not?

A. It was to assist American carriers where necessary to enable them to complete with foreign carriers on an equal basis.

Q. So to the extent that you have such subsidies, such subsidized American carriers operating in a Conference where the rates are, in so far as possible, fixed at a level that will return the American carrier as close as possible to his operating cost plus a profit, the American carrier then, in a sense, is subsidized twice, is he not?

A. No, he gives the subsidy back to the Government.

Q. He gives the subsidy back to the Government in the event it exceeds certain returns to him?

A. No; if he doesn't need it, he gives it all back.

Q. I agree. But in the event that the rate level is held by the Conference at a point where the return, where it returns the high cost of American operation plus a profit, then in such a case the American shipper is compelled to subsidize all of the foreign lines in that Conference, is he not?

A. Well, are you indicating the shipper pays the freight?

Q. I am indicating that the shipper or the consignor pays the freight. Someone pays it.

A. Well, as a rule, of course, these days, with ECA and [fol. 1188] so forth, I don't know who is paying the freight.

Q. In the first instance, at least, the shipper pays the freight. He may pass it on, but in the first instance he pays it, does he not?

A. Anybody that buys an article pays the whole cost of getting the article.

Mr. O'Connor: What about the importer? He uses ships, too, doesn't he? You want to take that old argument that the exporter doesn't pay the rate, the importer does, and you have got the contract system working both ways.

The Witness: Sure, the importer pays it.

By Mr. McGovern:

Q. Let us get back to the question, Mr. Sinclair. Let us get——

A. I don't know where we are going, really.

Mr. O'Connor: I don't either.

By Mr. McGovern:

Q. (Continuing:) In the case where a Conference pursues a rate policy designed to permit American carriage to return its cost plus whatever profit they can in such cases, you have admitted earlier the foreign lines in that Conference obviously obtain a higher rate of profit because their costs are lower.

A. That's right.

[fol. 1189] Q. To that extent, then, the Conference rate system operates, does it not, to tax either the importer or the exporter for low cost foreign operation without passing on to the shipping public the benefits of the low cost foreign operation?

A. Well, apparently some United States Government Departments applaud that, because that is one manner of giving the foreign countries the dollars with which to buy the goods.

Q. Do you applaud it?

A. I believe in stability, and if the other fellow makes more money because of his lower cost operation, well, you can't have two things. I know one thing, that if everybody was right down and we had the tramps in distress, as we have had them, and as Isbrandtsen chartered them and others chartered them, running at their cost of operation, there would have been chaos around the place. They were in and out, tramps.

Q. During the period——

A. Trying to get home.

Q. During the period when you were Chairman of the North Atlantic Continental Freight Conference, did you have a measure of stability achieved?

A. Well, we always seemed to have a little trouble here and there—I don't know.

Q. Well, it is not the best of possible worlds, but would [fol. 1190] you say that by and large you had a stabilized Conference operating?

A. Well, let's say that the Conference stayed together, remained a Conference.

Q. And that despite the fact that you were using the contract system on only one to two hundred items out of a total tariff containing about approximately 1,400 to 2,000 commodities?

Mr. Hupper: I object to that, because there has been no statement here that covers that figure.

Mr. McGovern: There has been a statement here——

Mr. Hupper: I am going to put that in later.

Mr. McGovern: Mr. Crinkley specifically testified he had an examination made of the Conference tariffs and they showed those facts.

By Mr. McGovern:

Q. In short, Mr. Sinclair, the point I am coming at is this, that in the prewar period from '37 up to '39 or '40, the Conference system in the North Atlantic trade only covered a small portion of the total number of articles moving in that trade.

A. You mean the number of articles?

Q. The number of articles.

A. Yes. I don't know what that would mean as to quantity of shipment.

[fol. 1191] Q. Well, regardless of either quantity or number, the contract system was not used across the board to apply to all articles moving?

A. Are you speaking now to the Continent or from the Continent?

Q. I am speaking to the Continent, eastbound.

A. To the Continent, it did not apply to all articles, so-called general cargo that had no specific rate, but on all of the major so-called commodity rates the contract system applied.

Q. What period is this you are speaking of?

A. Well, when I was Chairman of the Conference. The period——

Mr. O'Connor: Before World War II that was general because everything stopped at World War II.

The Witness: Yes, it stopped, the Neutrality Act put an end to it.

Examiner Robinson: Stopped for our entry.

The Witness: Yes. You see the other governments, there wasn't any service to the Continent after that.

By Mr. McGovern:

Q. You indicated, Mr. Sinclair, that one of the desirable features of the contract system was that it allowed the exporter to have rate protection for forward sails, is that right?

[fol. 1192] A. Yes.

Q. Well, now, was that rate protection any more secure in the case of the Conference than it was in the case of Isbrandtsen?

A. I don't know whether he was satisfied with Isbrandtsen. I suppose he made a contract with Isbrandtsen.

Q. Well, I am not talking about satisfactory in terms of service; I am asking whether or not the exporter could not obtain as secure rate protection for forward sails from Isbrandtsen, who is maintaining a regular service in that trade, as you could from any Conference member?

A. I have no idea. I was merely interested in making contracts with the people with whom I had agreements on rates.

Q. I appreciate that, but I am coming at the question, why you think the contract system is necessary to permit forward protection to shippers?

A. Just so that you do the job once and you are through with it, you have your Conferences, you make your rate, and that is the end of it. You make your contract, you don't have to have it opened up just because somebody gets an idea of cutting the rates the next week.

Q. You indicated also, I think, that in your judgment the shipper and the carrier have an identical interest.

[fol. 1193] A. Yes, they have a common interest.

Q. They have a common interest—the shipper is concerned, is he not, to get ocean carriage at the smallest possible cost?

A. Not necessarily.

[fol. 1194] Q. If that is the case, then what possible difference could rate cutting make? Rate cutting would not attract shippers, in your judgment?

A. It would attract some traffic managers, who probably don't know what is good for the policy of the company.

Q. You are talking about traffic managers, I take it, who are not concerned with dissipating the assets of their company by paying higher freight rates than they need?

A. I don't mean that, I don't think that the traffic manager who goes all down the line on cut rates is doing a service to his company.

Q. Why not?

A. Because he disturbs the market, he gets it to an unreasonably low level, sooner or later the rates go up and the prices in the meantime have been put down, and he has a very hard time in adjusting the prices.

Q. The prices go up for what reason, in your judgment?

A. Because the rates got down too low—somebody let down the umbrella.

Q. But if there is competition present, the rates will not get up to an unreasonable point, will they?

A. I don't think they were at a reasonable point to start with—I see the shipper and the carrier agree—now, if there is some fellow wants to have his cake and eat it, well, let him stay in that position.

[fol. 1195] Q. And that brings us to the *position* whether or not in your judgment the shippers employing ocean carriers are entitled to reasonable rates?

A. They certainly are. I think the statute grants them that.

Q. In your judgment, what is a reasonable rate?

A. One that will enable him to do the business and enable the carrier to get a fair return.

Q. Now, in a situation such as the North Atlantic trade where the conference embraces more than 80 percent of the car-iers and employs a conference contract, what assurance is there to the shipper, they will receive reasonable rate adjustments?

A. His long exper*e*ince in dealing with the contract.

Q. Well, suppose his long experience in dealing with the

conference convinces him that he is being charged and has been charged extortionist rates, what could he do about it?

A. You will probably find him down at the Maritime Commission making complaints.

Q. And what can the Maritime Commission do about it, in your judgment?

Mr. O'Connor: What will they do about it would be a better question.

The Witness: I don't know. I guess we haven't had them complain. There were one or two shippers that com-
[fol. 1196] pa*l*ined, and it was found that they had no case at all, no complaint.

By Mr. McGovern:

Q. If you charge in the conference an unreasonably high rate but you are sufficiently discreet as to charge it equally to all shippers, in your judgment, does the Maritime Commission offer any relief to an aggrieved shipper?

Mr. Hupper: I object.

Mr. Galland: The Maritime Commission is not bound by his answer.

Mr. McGovern: I assume not, Mr. Galland.

Mr. Hupper: There is no evidence here of extortion of rates and no evidence the Maritime Commission does not perform its function under the law, and that is not an appropriate subject of inquiry.

By Mr. McGovern:

Q. What c-ntrol actually is exercised over the level of the rates fixed by the conference aside from your own arbitrary discretion?

Mr. Hupper: I object to that question.

Examiner Robinson: You mean, exercised by whom?

Mr. McGovern: Exercised by anybody, Mr. Examiner. He has suggested that the conference rate level is reasonable. I am trying to test that statement "reasonable" to find out what the standard of reasonableness is.

[fol. 1197] Examiner Robinson: All right.

By Mr. McGovern:

Q. In a case, mind you, Mr Sinclair, where you don't have independent competition, I take it that you assume that the ideal situation is a situation where all the carriers in a given trade are members of the conference?

A. Yes.

Q. Now, when they fix the rate of leaf tobacco at $3.20 per hundred pounds from North Atlantic Continental ports to Bremen and Hamburg, what standards are available to indicate whether that is a reasonable or unreasonable rate?

A. I don't know what the conditions were under which they fixed the $3 rate.

Q. Well——

A. It might have been justified and might not, I don't know.

Q. Make it 30 cents, a 30-cent rate or a $30, or a $30 rate, what is the standard? What test do you use for arriving at a conclusion that your rates are reasonable?

A. You are throwing out what I said before about talking to the shippers.

Q. No, I am not. You talk to the shippers, I assume the shippers suggest the rate is unreasonable, and that they should have a rate of, let us say, $2.25?

A. Well, you are assuming now. I can't take the hypothetical cases. I try to, try to conduct the business when [fol. 1198] I was running the conference, we met with the people, we never refused to see anybody, and we didn't always agree with the fellow that was complaining because we had evidence to the contrary.

Q. Yes, but I ask you what possible recourse does a shipper have in such a case that he feels your rate is unreasonable? There is no independent shipping available for him to repaire to, you have refuse- an adjustment——

Mr. Hupper: The rates here of Isbrandtsen and the conference on tobacco I understand to be the same, and there is plenty of provision in the Shipping Act if carriers, whether they are in the conference or not, if they indulge in practices that are unfavorable to the commerce of the United States or to shippers, the Maritime Commission has ample authority thereunder to deal with them—there is a pretty complete pattern of regulations.

Examiner Robinson: I know of at least one case in which the Commission threatened to disapprove a conference if the carriers in that trade did not do something about the rate where they did not have the jurisdiction directly over the level of it, and they said to the Congress of the United States, "If you don't do something about it, we will take steps to disapprove the conference agreement."

Mr. McGovern: But I take it there is no direct recourse that a shipper has to the Maritime Commission as is the [fol. 1199] case with the shippers or with the railroads or the trucks under the ICC. The point I was trying to elicit from the witness was that the only test of reasonableness available is your own judgment in the conference as to what the traffic will bear in the trade.

Examiner Robinson: No, I distinctly heard him say a while ago that he considered a reasonable rate to be one where under merchandise will move and the carrier will still make a reasonable profit.

By Mr. McGovern:

Q. But is it not true, Mr. Sinclair, that from your point of view beyond the carriers are as well satisfied if they carry two tons of leaf tobacco at a $10 profit, that is $20 all told, as if they carried four tons at two and a half dollars profit, which in total would pay them the same profit would actually entail much less carriage and inconvenience?

A. You mean they are willing to carry a half a ship at the higher rate than the——

Q. Full ship at a lower rate.

A. Full ship—would be full ship pay them, or would they have to get other tobacco to go with that leaf tobacco?

Q. Presumably, people would be compensatory?

A. I mean, you have got all kinds of situations, you are not just out there carrying to move a lot of stuff that won't——

Q. Well, not to keep us here all night, specifically what [fol. 1200] I am trying to come at is, what kind of a rate you think is a cut rate? By cut rate, do you mean any rate quoted under the conference tariff?

A. If an independent line offers a shipper a rate differ-

entially below the conference rate, I would say he cut the rate, the rate being the rate I am talking about.

Q. By "rate differentially below," you mean merely a rate that is lower?

A. No, the common practice is to take a percentage off and add a percentage on the boat.

Q. Well, are you aware that in an exhibit marked for identification, Exhibit 13, prepared by your successor, Mr. Andrews, in a representative list of comparisons of various rates of the conference and Isbrandtsen's tariffs, the percentages shown for the differences between the Isbrandtsen rate and the conference rate run 11 percent, 10 percent, eight percent, and seven percent, 12 percent, six percent, 11 percent——

[fol. 1201] Examiner Robinson: Again, Mr. McGovern, there is no showing that they are the same commodity, so it doesn't mean anything. It was on that basis that I didn't put it in.

Mr. O'Connor: It is supposed to be——

Examiner Robinson: No, no, no.

Mr. Galland: We don't know whether they do or not.

Examiner Robinson: No, he said he was just taking rate for rate. He starts, you can see they go up in value, he doesn't mean for the same commodity in both tariffs. That is the fallacy of the thing.

Mr. O'Connor: You are talking about the westbound——

Examiner Robinson: Whatever this is.

Mr. Crinkley: Could I just say one word about that?

Mr. Sinclair has testified more or less that that independent always quotes a certain given percentage under the Conference. These records don't show that.

Examiner Robinson: No, I take it for what it is worth.

Mr. McGovern: Your understanding of this is that even as of those two rates, they are not for the same commodity.

Examiner Robinson: That is my understanding, and that is why I felt that the thing didn't mean anything.

Mr. Hupper: We didn't offer it in evidence.

[fol. 1202] Mr. McGovern: I hadn't realized that.

Mr. O'Connor: But you can take the other one on the eastbound. Let me have that other one eastbound, and get the percentage.

Mr. Hupper: Eastbound, it is not westbound.

Examiner Robinson: You see, there is an entirely different situation.

By Mr. McGovern:

Q. Let us assume—let us state on the record the evidence here over the past three or four days shows at least in so far as the Isbrandtsen witnesses have been able to indicate that there is no uniform differential—some rates, a few rates are higher than the Conference rates, some are substantially lower, some are a little lower, and there is a complete, utter variation up and down the line.

Now, in such a situation would you say that was a rate cutting policy?

A. Well, I take it they make whatever rate is necessary for them to get the business from the Conference lines.

Q. Suppose the business is not moving at all, as in your case of the beer illustration?

A. Well, they may have had one of those situations, they got to the fellow that was looking for a new market.

Q. But in any case, in your judgment I take it a rate which is lower than a Conference rate is necessarily an un- [fol. 1203] reasonable rate by a rate-cutter?

Mr. Hupper: He hasn't said that.

The Witness: Not at all.

By Mr. McGovern:

Q. Then rates below the Conference rates are not necessarily unreasonable?

A. I don't know whether they are unreasonable or not to the party that is making them.

Q. Well, we have to have it one way or the other, do we not, either they are unnecessarily unreasonable merely because they are lower than the Conference tariff, or they are not unnecessarily unreasonable?

A. I don't know. The question here was the reasonableness of the rate question, of a Conference contract practice.

Q. You testified that one of the salutary purposes of the Conference was to preserve a reasonable rate structure, and

you also testified that you thought that the Conference tariffs were reasonable.

Now, I am asking you whether or not an Isbrandtsen rate under the tariff of the Conference is necessarily, in your judgment, unreasonable because it is under the tariff of the Conference?

Mr. Hupper: He hasn't approached it in that way.

Mr. O'Connor: Let him answer it, if you please. You can answer that question, can't you?

[fol. 1204] The Witness: I don't know whether his rate is unreasonable to him or not. I take it that he makes whatever rate is necessary to get the business for Isbrandtsen.

Mr. McGovern: That is all.

Mr. Cockrum: Mr. Examiner, I have two or three questions.

By Mr. Cockrum:

Q. Mr. Sinclair, suppose you are given a shipment by a proposed shipper and you quote him a contract rate for that shipment if he signs an exclusive patronage contract with you. That rate which you quote him as being the exclusive patronage contract rate, I presume, is the reasonable rate.

Supposing, however, the shipper says, "No, Mr. Sinclair, I don't propose to sign an exclusive patronage contract with you." And you tell him, "Well, now, in that event, I will charge you a so-called non-Contract rate which is 20 per cent higher."

Is that so-called non-contract rate on that shipment reasonable?

A. Yes, I take it it goes with the fact that he is out in the market to get lower rates. That is his policy, so when he can't use those lower rates, he must expect to pay the higher rates.

Q. Now, we are not assuming that; I am just posing the question to you as to which of the two rates is a reasonable [fol. 1205] rate?

Mr. Hupper: I suggest, Mr. Examiner, that we are dealing with a subject matter here, when you are talking about rates, reasonable or unreasonable, quite apart from the issue in this proceeding. I think it goes pretty far afield.

Examiner Robinson: I am afraid it is all wrapped up together.

Mr. Cockrum: It is very much wrapped up together.

Mr. O'Connor: It was brought out and we are going to be at it a long time. I am sorry to say I have missed all the trains I could take. I thought we were going to adjourn at 4:30. But if Mr. Sinclair isn't going to come back Tuesday —we are going to be at this a long time because he is a very vicious witness when he opens the umbrella, so let's go ahead till all times now.

Will you be back Tuesday or Wednesday?

The Witness: I probably won't be back then.

Examiner Robinson: Off the record.

(Discussion off the record.)

Examiner Robinson: On the record.

The record is officially closed as of this time, and the hearing will be resumed in New York, at the same place at ten o'clock a.m. on May 24th, subject to any change which might be made on the meantime to suit particular con- [fols. 1206-1208] veniences.

(Whereupon, at 5:20 p.m., the hearing in the above-entitled matter was adjourned to May 24, 1949, at 10:00 a.m.)

[fols. 1209-1210] Transcript of Hearing

Met, pursuant to adjournment, at 10:00 a.m.—May 24, 1949.

[fol. 1211] PROCEEDINGS

Examiner Robinson: If you gentlemen are ready, we will start.

Mr. Hupper: Mr. Examiner, I refer to a discussion had at the end of Mr. Sinclair's appearance as a witness here on Friday, the 13th, in which mention was made of various figures.

I found that Mr. Andrews, who had been on the stand before, was qualified to make up schedules of relevant figures in the form of exhibits, and you will recall, of course,

that the exhibit was put in evidence that day which was intended to be enlarged in more detail by Mr. Andrews.

Examiner Robinson: Exhibit 12 was put in.

Mr. Hupper: I refer to Exhibit 12.

Therefore, I will call Mr. Andrews again this morning and will, through him, offer three exhibits.

Examiner Robinson: Very well.

CHARLES R. ANDREWS, having been previously sworn, testified further as follows:

Direct Examination.

By Mr. Hupper:

Q. Mr. Andrews do you have in your hand a document which has a heading, "List of 581 Commodities on which the Rates of Isbrandtsen Co., Inc., are lower than the Rates of North Atlantic Continental Freight Conference Lines"? [fol. 1212] A. I have.

Q. Did you prepare that document?

A. I did:

Mr. Hupper: I offer same in evidence, Mr. Examiner, and request that it be marked Exhibit 12-A.

Mr. McDowell: I object to it.

Examiner Robinson: On what ground?

Mr. McDowell: I object, your Honor, on the grounds that the exhibit is irrelevant and immaterial. The difference in rates between Isbrandtsen, or any other line, and the Conference Rate Scale is not in any way related to this case.

Mr. Hupper: It was asked for by everybody.

Mr. Galland: We were united in asking that it be in more detail.

Mr. McGovern: I suggest that it be marked for identification until we find out what it is.

Examiner Robinson: Suppose we mark it Exhibit 12-A for identification.

Mr. Hupper: That is all right.

(Schedule referred to was marked Exhibit 12-A for identification.)

By Mr. Hupper:

Q. Mr. Andraws, referring to this exhibit just marked No. 12-A for identification, will you explain in some detail [fol. 1213] what it is?

A. The attached schedule, Pages 1 through 23, contains rates to ports in Belgium, and Holland and Germany as appear in following tariffs on file with the United States Maritime Commission:

North Atlantic Continental Freight Conference tariff No. 18, issued July 31, 1946, effective July 1, 1946, as amended by Corrections No. 1 through No. 648 issued April 28, 1949.

The Isbrandtsen Company, Inc., North Atlantic Continental Freight Tariff No. 2, effective August 1, 1946, as amended by Corrections No. 1 through 747 issued April 18, 1949.

and lists 581 separate commodities on which the rates of Isbrandtsen are from 3.3 to 53.4 per cent lower than the rates of North Atlantic Continental Freight Conference Lines.

In this connection, I have attached a chart pages 24 and 25, to determine the difference in percentage rates of Isbrandtsen are lower than the rates of North Atlantic Continental Freight Conference Lines.

It will be noted that the attached schedule comprise substantially the principal commodities moving in volume to Belgium, Holland and Germany.

A comparison has also been made of the rates and classifications in Isbrandtsen Company, Inc., North Atlantic [fol. 1214] Continental Freight Tariff No. 2, effective August 1, 1946 with the rates and classifications in North Atlantic Continental Freight Conference Lines Tariff No. 18, effective July 1, 1946, and it clearly and definitely shows that rates and classifications in Isbrandtsen Tariff No. 2 were copied word for word from North Atlantic Continental Freight Conference Lines Tariff No. 18,effective July 1, 1946. In fact, Isbrandtsen substantially copied the title of the Conference Tariff No. 18, viz:

Conference Tariff Title—North Atlantic Continental Tariff No. 18.

Isbrandtsen Tariff Title—North Atlantic Continental Freight Tariff No. 2.

Further, when Conference Lines adopted several odd tariff page numbers, such as 23A, Isbrandtsen subsequently adopted the same odd tariff page numbers, viz:

Conference Tariff No. 18

Page No.	Correction No.	Date Issued
23A	605	March 10, 1949
58A	72	Dec. 12, 1946
72A	505	Oct. 18, 1948

Isbrandtsen Tariff No. 2

Page No.	Correction No.	Date Issued
23A	745	April 18, 1949
58A	94	Jan. 13, 1947
72A	705	Mar. 25, 1949

The rates and classifications in Conference Lines Tariffs were compiled by the Conference Office as a result of many [fol. 1215] years (more than 25 years) of investigation, study, research work, collaboration with shippers, importers, etc.

The above facts again clearly and definitely demonstrate that Isbrandtsen in copying the Conference Lines' Tariff rates and classifications (Isbrandtsen also copied Conference tariff rules in many cases) was one of expediency.

As shown in the rate comparison captioned "Comparison of Conference and Isbrandtsen-Moller Company, Inc., Rates from November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam," the general pattern or rate basis used by Isbrandtsen from November 6, 1939 to April 30, 1940 was Conference Lines' rates less 10 per cent even to one-half (½) cent figures. And when Isbrandtsen filed rates with the United States Maritime Commission effective from August 1, 1946, Isbrandtsen adopted in total all of the Conference Lines' tariff rates and classifications. To show what little attention Isbrandtsen paid to their tariff classifications and how closely Isbrandtsen copied the Con-

ference rates and classifications, we list below several printing inaccuracies which first appeared in the Conference Lines' Tariff No. 18 and which Isbrandtsen subsequently copied in their Tariff No. 2:

Original Tariff Page 74 In Both Tariffs:

Conference omitted a bracket "(" in front of the word "Moth" in their tariff item "Paper Bags (moth)."
[fol. 1216] Isbrandtsen also omitted the same bracket in their tariff.

Original Tariff Page 79 In Both Tariffs

Conference misspelled the word "unshelled" as unshalled in their tariff item "Pecans, unshelled." Isbrandtsen also copied the misspelling in their tariff.

Original Tariff Page 118 In Both Tariffs

Conference omitted the word "ton"in their tariff item "Wire Coppered Steel." Isbrandtsen also omitted the word "ton" in their tariff.

By Mr. Hupper:

Q. Mr. Andrews, this document marked Exhibit 12-A for identification, which you have just substantially read in answer to my last question, was prepared by you, was it?

A. Prepared by me with my assistants in the Conference Office.

Q. Annexed to those two pages are 25 additional pages which comprise the same Exhibit 12-A for identification. Who prepared those figures?

A. I prepared a great deal of the figures, and my two assistants upstairs.

Q. It was entirely done under your supervision, was it?

A. That is correct.

Q. Have you examined the same with care?

A. I have.

[fol. 1217] Q. Could you tell us whether or not those figures are substantially correct, according to our best judgment and information?

A. They are.

Mr. Hupper: I think, Mr. Examiner, the exhibit should now be marked in evidence.

Mr. McDowell: May I be heard for a moment on that, Mr. Examiner?

Examiner Robinson: Surely.

Mr. McDowell: For the sake of clarity, I would like to point out that I objected to the admission of Exhibit 12 on last Friday, and I then raised the objection that the exhibit was irrelevant and immaterial, and I understood you overruled that objection, and I proceeded to point out, even assuming the admissibility of the exhibit, that it ought not to be received because it was so incomplete and so vague that it would introduce elements of doubtfulness as to various items which would require a considerable burden on the part of other counsel to clear up.

Now, I take it that the exhibit as now presented does clear up those objections, but the objection of irrelevancy and immateriality still remain, and I would like to renew that objection.

I don't see what relevance a comparison of the Isbrandtsen rate level with the Conference rate level has to the [fol. 1218] issues in this case. I do not see that a distinction or a disparity in rates between Isbrandtsen, or any other independent line, and the Conference rates can be a defense to the discrimination, if it be a discrimination, and a retaliation of which the Conference Lines are accused in that they maintain a dual system of rates.

It seems to me if they want to attack Isbrandtsen rates and rate policies, that would be a matter of cross-complaint here, and I understand no such issue has been raised.

It seems to me this whole line goes to the propriety of the Isbrandtsen rate policy, and I submit there has been no issue raised concerning such propriety which would make material or relevant an examination of this kind.

Examiner Robinson: Does anyone else have any comment?

Mr. Galland: Mr. Examiner, we have been proceeding on the theory that we have in this case a mixed question of law and economics, and unless the economic questions are gone into here, I don't think this hearing will serve very much purpose.

We have testimony in the record, which I think went in without objection, when Mr. Hupper was questioning Mr. Isbrandtsen and Mr. Crinkley, which dealt with the question of whether Isbrandtsen's rates were systematically under [fol. 1219] the Conference rates, and Mr. Isbrandtsen testified, I think, "not necessarily." That certainly left the record in doubt as to that point.

But if that line of questioning was good then, I think there is no objection, and certainly this exhibit is very useful in clearing up the situation that was dealt with in the abstract.

[fol. 1220] Mr. Cockrum: Mr. Examiner, I should certainly like to join in the objection of the Department of Justice. I also can't see the relevancy of an extensive rate comparison such as has been presented in Exhibit 12-A.

The fundamental issue involved in the case is very clear. It doesn't contemplate any such thing as is embodied in this exhibit 12-A.

I would also like to point out in that connection the statement of Mr. Andrews appearing on the first two pages of the exhibit is almost entirely argumentative and has no place in this record.

I have particular reference to the paragraph beginning at the middle of page 1, "a comparison has also been made of the rates and classifications in Isbandtsen, Incorporated, and extending throughout the remainder of Mr. Andrews' statement. It is purely argumentative, has no place, I don't think, in the record at all.

Examiner Robinson: Does anybody else have anything?

Mr. McGovern: Mr. Examiner, we would like to withdraw the earlier objection we made to the immateriality of the exhibit on the ground that it was utterly lacking in probative value because of its almost utter incompleteness. With regards to what at least the defendant tried to show, we think this particular document is fairly complete. But I point out, as Mr. Andrews has himself observed, he purports to [fol. 1221] deal here with only 581 commodities out of a total conference tariff listings of 1863. You have also testified that on some commodities moving in substantial volume in the trade the rates are at least the same. I have reference to tobacco, for example.

The Witness: That is correct.

Mr. McGovern: Consequently, while we don't object to this particular exhibit going in for what it is worth, we object to the conclusions drawn from the exhibit, because they certainly are not justified by a listing of 581 items out of a total of 1863.

We then renew our basic objection we made at the original tender of the exhibit, Mr. Examiner, to the fact that we think a rate comparison is itself utterly irrelevant to any issue in the case.

Mr. O'Connor: May I add to what Mr. McGovern says. We join with the Department of Justice and with the Department of Agriculture in objecting to the admission of this exhibit, or this line of testimony, on the ground that it is immaterial and irrelevant, for the reason that it makes no difference in the issues in this case whether Isbrandtsen's rates were lower in one instance or in 581 instances, whether they were lower by a flat percentage, or whether they were lower by comparison from 3.3 percent to 53.4 percent.

Now, something has just been said by the Solicitor for the Maritime Commission, that part of the testimony was [fol. 1222] brought out in the examination of Mr. Isbrandtsen and Mr. Crinkley. Of course, they were called by the respondents. Now, if the respondents were not satisfied with that testimony as to the difference in rates, they cannot at this time submit, bring in proof to offset the testimony which they brought in. They were not our witnesses.

Mr. Hupper: It is a bit sardonic to me to note the eagerness with which the opposition wishes to exclude facts from this record. What Mr. O'Connor has just said is true enough as argument, but we are here dealing with a few facts, and we are entitled to have all the facts in the record. One of the facts in the record is that Messrs. Isbrandtsen themselves were consistent practitioners of the contract rate system in the thirties. Everybody here noticed the very great difficulty with which the facts were extracted from both Mr. Isbrandtsen and Mr. Crinkley. We were told the rates of the Isbrandtsen Company were not necessarily lower. When the question was put to him factually, they were substantially silent. If anybody wants a demonstration of what a hostile witness is, called by the opposition necessarily because the complainant laid down and put the

burden on the respondents. I respectfully suggest you wouldn't find a better illustration.

It is our duty to bring out the facts, and we have done it by comparison of the two tariffs.

Now, I suggest that it is a distortion of the purpose of [fol. 1223] these exhibits to say that we are attacking Isbrandtsen rates. We are showing what they are. He can quote rates just as low as he wants to. We can quote rates as low as we want to, or as high. But we are entitled to know what the facts are in relation to the level of the rates when it definitely appears in the case that he is a practicer of the contract rate system when he thinks that is desirable.

You will recall the testimony the other day that in substance there was no disgrace in it. It is not a sin or a crime. In substance, Mr. Isbrandtsen and some other lines regularly charge rates less than the conference lines. They are entitled legally to do it. That doesn't mean their freedom to do that entitles them to attack other people which charge rates under a contract, if you please, sir.

These figures can't help being material, Mr. Examiner, and I respectfully suggest the document be received in evidence.

Mr. O'Connor: Mr. Examiner, may I ask the propounder of this testimony the purpose of the testimony in reference to the issues?

Examiner Robinson: I don't want you to ask him, but you might ask the attorney.

[fol. 1224] Mr. Hupper: You will see the purpose of it in the heading, to show clarification of the testimony of witnesses I put on because you declined to do it. It shows what the facts are as to the number of items in which Isbrandtsen can have lower rates, and in respect to which they didn't give clear testimony the other day.

Mr. O'Connor: That doesn't go to the purpose.

Mr. Hupper: The purpose is to get all the facts in the record.

Examiner Robinson: I am ready to rule, in view of the fact that the Commission has decided an important element is economic facts as well as law, and there is no question in my mind, assuming the ramifications of this proceeding, that I would not feel justified in ruling this out.

Now, I realize that Mr. McGovern says it may not be as useful as you want, but that goes to efficacy, not the relevancy.

So it will be marked in evidence Exhibit 12-A.

(The document referred to, previously marked Exhibit 12-A for identification, was received in evidence.)

Mr. McGovern: May we assume there will be distinction noted between fact and fiction. It may be a fact that 581 rates are lower, but I draw your attention to what I assume is an alleged statement of fact in the last sentence on the [fol. 1225] first line, to the effect that "Isbrandtsen in cutting the Conference Lines' tariff rates and classifications was one of expediency.

That is an assumption.

Examiner Robinson: We have to assume that those statements will have to be taken for what they are worth.

Mr. McGovern: In reading that, it seemed incomplete. "—that Isbandtsen in cutting the Conference Lines' tariff rates and classifications was one of expediency."

Isn't there a word omitted? I mean, Isbrandtsen Company could hardly be one of expediency. Do you mean, "purpose"?

The Witness: I mean what I have in the statement.

Mr. McGovern: I am suggesting it isn't complete.

The Witness: Get a dictionary. I will let it stand as it is written.

Mr. McGovern: We will have to give them a 50-50 mark on English.

Examiner Robinson: There is no use in going further. We can sort of uncipher, or decipher it.

Mr. Hupper: The word "action" should be inserted after "Isbrandtsen."

Mr. McGovern: I thought it may have been "purpose."

Mr. Cockrum: Mr. Examiner, I suppose your ruling also [fol. 1226] was construed as an overruling of my objection with respect to the argumentative character of the statement itself.

Examiner Robinson: Oh, yes. This has to be correctly interpreted.

Mr. Hupper: The Conference is not suggesting that any-

body should be deprived of all the argument they want at any time.

Mr. O'Connor: Let's reserve the argument for counsel, not the witnesses. All these witnesses think they are curbstone lawyers, and that doesn't help up keep our monopoly.

Examiner Robinson: That is why I didn't want you to ask the witness the question you asked him a while ago.

Mr. O'Connor: I meant to ask counsel.

Examiner Robinson: All right. Let's go ahead.

By Mr. Hupper:

Q. Mr. Andrews, do you have in your hand a document which bears the entitlement "Comparison of Conference and Isbrandtsen-Moller Co., Inc. Rates from November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam."?

A. I have.

Mr. Hupper: I ask that that document be marked, Mr. Examiner. You might mark it Exhibit 12-B.

[fol. 1227] Examiner Robinson: Is there any objection to it?

Mr. McGovern: Is this to be marked for identification?

Examiner Robinson: For the nonce, yes.

Mr. McGovern: I won't object to it being marked for identification. Let me hear what it is supposed to be first.

Examiner Robinson: It will be marked Exhibit 12-B for identification.

(Document referred to was marked Exhibit 12-B for identification.)

By Mr. Hupper:

Q. This document marked Exhibit 12-B for identification, Mr. Andrews, will you kindly give us the history of that with respect to its preparation?

A. This is a schedule of rates on file with the United States Maritime Commission, and appeared in Isbrandtsen——

Mr. McDowell: I object, Mr. Examiner. The answer is not responsive to the question. The question was, what was

the history of the preparation, and the witness is reading the exhibit.

Mr. Hupper: Can't we be a little informal here?

Examiner Robinson: We are trying to find out. I really think that technically you are right.

Mr. Hupper: We will slow this thing up. It is going to [fol. 1228] be in the record for what it is worth.

Mr. McDowell: The witness is reading into the record the material which he has prepared, and we have not yet reached a decision whether it may be admitted in evidence.

Mr. Hupper: He may not be as concise as perhaps you would be in describing something, but still we are in an administrative hearing. Let's get ahead.

You know my objection. I don't think the Department of Justice has any business in this proceeding opposing the respondents or the Maritime Commission. I have maintained that throughout, with the greatest courtesy to you.

Examiner Robinson: All right, gentlemen. Let's get ahead.

Read the question.

(The pending question was read by the reporter.)

By Mr. Hupper:

Q. Confine yourself to the question.

A. It was prepared in my office, under my supervision, by several of my assistants.

Q. During what period?

A. During last week, in the weary hours of the morning.

Q. Is it a substantially correct document, according to your judgment?

[fol. 1229] A. It is.

Q. Kindly tell us the purpose of this document?

A. As stated before, it is a comparison of Conference and Isbrandtsen-Moller Co., Inc. rates from November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam.

Q. The statement that appears on the face of that was prepared by you, was it?

A. It was.

Q. Will you kindly read the same?

A. Attached schedule of rates, on file with United States Maritime Commission, appeared in Isbrandtsen-Moller

Company, Inc., Belgium-Holland Freight Tariff No. 1 and Corrections No. 1 through 53 thereto, and applied from Atlantic Coast Ports of the United States to Ports in Belgium and Holland.

There has also been shown in the attached schedule under the heading "Conference Rate" the corresponding rate in effect at the time of the North Atlantic Continental Freight Conference Lines.

This rate comparison clearly and definitely demonstrates the general pattern or rate basis used by the Isbrandtsen-Moller Company, Inc., at the time in arriving at the rates shown in the aforementioned tariff (as corrected), namely Conference rates less ten (10) per cent even to one-half (½) cent figures, viz:——

Q. Pardon me just a minute. Below what you have read [fol. 1230] you have certain comparative figures in relation to various items, have you not?

A. I have.

Q. I will ask you not to read those, unless somebody here would like them read.

Examiner Robinson: I don't see the necessity for it if you put the document in, Mr. Hupper.

By Mr. Hupper:

Q. Will you kindly read the next paragraph below the items?

A. Isbrandtsen-Moller Co. Inc. Tariff and Corrections, as per attached schedule, contained 672 separate tariff listings, 449 of which (more than two-thirds) are exactly ten (10) per cent, even to one-half (½) cent figures, under the Conference rates in effect at that time.

Mr. Hupper: I offer this Exhibit 12-B for identification in evidence.

Mr. McDowell: I object on the ground the exhibit is irrelevant and immaterial, and has no bearing on the issues in this case.

Mr. Cockrum: I join in the objection.

Examiner Robinson: I make the same ruling.

Mr. Cockrum: I would like to point out further that this Exhibit 12-B goes back into pre-war rates, which certainly aren't involved in any way in this particular proceeding.

[fol. 1231] Examiner Robinson: I think you will recall, though, Mr. Cockrum, that it was during that period that the testimony shows—I am not making the statement whether I think it is right or wrong—that there was a system of contract rates used by Isbrandtsen Company, in one of its companies, I don't recall which, so I don't think that objection would hold under the circumstances.

Mr. McDowell: What is that, again?

Examiner Robinson: Wasn't there testimony that one of the companies, I don't know which one, whether it was Isbrandtsen Co., Inc., or Isbrandtsen-Moller Co., or what it was, had a dual system of rates?

Mr. McDowell: Oh, no.

Mr. O'Connor: There was no testimony of dual rates. They had a form of contract that they had some shippers sign. If a shipper agreed to ship all his iceboxes, for example, they got a certain rate. That is Exhibit 9 in evidence, I think. But there is no dual system.

Examiner Robinson: My distinct recollection is that Mr. Isbrandtsen himself stated he had a two-rate system there for a period.

Mr. O'Connor: No. When Mr. Hupper says a contract rate system, those contracts are in evidence. They are contracts by which a shipper agrees to ship all items mentioned by the Isbrandtsen Line at such a rate. But there [fol. 1232] are no dual rates.

Examiner Robinson: Perhaps I might be wrong on that, but that was my recollection.

Mr. O'Connor: But, of course, that is immaterial, too. Any burglary committed by the complainant is no defense to the defendant for burglary committed by him. What purpose it serves we haven't been able to gather.

Mr. Cockrum: I think the record very clearly shows, Mr. Examiner, that should any other prospective shipper come in with the same commodity, that he would be accorded the very same contract that was quoted to the shipper involved.

Mr. Galland: We are not rehashing that subject right now.

Mr. McDowell: No. I make this observation, though, if I may, and that is, it doesn't make very much difference to the issues in this case now what the policies of Isbrandtsen-Moller Co. were back before the war. And even assuming

now, for the sake of argument—you understand that I don't agree with that characterization—but assuming for the sake of argument that Isbrandtsen-Moller was practicing the exact contract system attacked, I think we would regard that as quite objectionable. We don't see his following that, if he was following it, would in any way exculpate the conduct of the Conferences involved in this case.

[fol. 1233] Examiner Robinson: There has been enough testimony here already about the predecessor companies and that they charged, and I don't see how I should rule this out on that ground if the rest of it was all right.

Mr. McDowell: It is a little remote, I think, but assuming for the sake of argument—let's take it this way—assuming for the sake of argument, and I am not trying to be captious——

Examiner Robinson: Have I ever said you were?

Mr. McDowell: Assuming for the sake of argument that the rate policies of the independent lines as of the time and immediately prior to the institution of the post-war exclusive patronage contract system by the Conference might in some way be related to the use of that system by the Conference, and might furnish some justification, I say assuming that for the sake of argument, I still don't see how it becomes relevant and material to reach back into the prewar period and pick out the conduct of a predecessor company, and from that try to argue the attempt by the Conference Lines to institute this system a year ago is justified.

Examiner Robinson: Of course, you can't deny the fact that both Mr. Crinkley and Mr. Isbrandtsen were just as much members of those companies then as they are of the present companies. Their actions then certainly can be linked up with the actions now.

[fol. 1234] Now, that the result of that is, I am not making any observation, but I am trying to get the linkage there.

Mr. McDowell: Of course, the two exhibits when contrasted, it seems to me there has been a substantial change in policy, and I don't see the probative value.

Examiner Robinson: That will come out.

I am going to let it in, subject, of course, to all the remarks you have made.

(Document referred to, previously marked Exhibit 12-B for identification, was received in evidence.)

By Mr. Hupper:

Q. Mr. Andrews, you hold in your hand a document which is headed "List of Isbrandtsen-Moller Co., Inc. Contract Rates for Period January 2, 1937 to August 31, 1939 to Antwerp-Rotterdam-Amsterdam"?

A. I do.

Mr. Hupper: I ask to have that marked, Mr. Examiner, as Exhibit 12-C for identification.

Examiner Robinson: It will be marked 12-C.

(Document referred to was marked Exhibit 12-C for identification.)

By Mr. Hupper:

Q. Will you inform us briefly, Mr. Andrews, the history of the preparation of that document?

A. I prepared this document substantially myself, with [fol. 1235] the aid of two of my assistants.

Q. That was also during this last week, was it?

A. That is correct.

Q. Tell us the purpose of the preparation of that document?

A. It lists 176 items on file with the Maritime Commission and which appeared in Isbrandtsen-Moller Co., Inc., European Contract Tariff No. 1, effective January 2, 1937 and Corrections No. 1 through No. 58 (dated September 15, 1939) thereto. These contract rates applied from Philadelphia and New York to Antwerp-Rotterdam-Amsterdam. While this contract Tariff No. 1 also contained contract rates to Havre, United Kingdom, Scandinavian and German Base Ports, we have only listed the contract rates to Antwerp-Rotterdam-Amsterdam.

Next attached is copy of Isbrandtsen-Moller Co., Inc., contract form as appeared in their European Contract Tariff No. 1 on file with the United States Maritime Commission.

There has also been shown in the attached list after each contract rate item the respective non-contract rate as appeared in Isbrandtsen-Moller Co., Inc. European Freight

Tariff No. 2, effective January 31, 1938 and Corrections No. 1 through No. 617 (dated October 14, 1939—changes to September 30, 1939) thereto and on file with the United States Maritime Commission. In the attached list under the heading "Conference Rate" the corresponding Con-
[fol. 1236] ference rate in effect as of September 17, 1939 has also been shown. Where Conference had no contract-non-contract rate basis on the item in question, we have so indicated by the word "None" but have inserted the Conference Tariff rate in effect at that time under the heading "Non Contract or Tariff."

Provision for Non-Contract Rates on these 176 contract rate items was covered by the following note on the second sheet (not identified by letter or page number) in Isbrandtsen-Moller Co., Inc., European Freight Tariff No. 2, effective January 31, 1938 and Corrections No. 1 through No. 617 (dated October 14, 1939—changes to September 30, 1939):

"Non-Contract Rates

"(Contract rates are listed in the European Contract Tariff No. 1 of the Isbrandtsen-Moller Company, Inc. Contract Rates are available to all shippers complying with the prescribed conditions.)"

It will be noted that on a great many Contract rate items Isbrandtsen-Moller Co., Inc., had no appropriate Non-Contract rate for the particular item. In all such cases the non-contract rate, therefore, would have been the general cargo rate, i. e., $.56⅔ per cubic foot, as per Isbrandtsen-Moller Co., Inc., European Freight Tariff No. 2.

Q. The next page, Mr. Andrews, that is to say, the second [fol. 1237] sheet of this exhibit No. 12-C for identification, is the Isbrandtsen contract form to which you referred in your testimony a moment ago, is it not?

A. That is correct.

Q. And that was copied in your office, was it?

A. That was copied in my office.

Q. Out of what?

A. Out of a copy of Isbrandtsen's contract tariff No. 1, effective January 2, 1937, as amended.

Q. Are you prepared to say it was correctly copied?

A. I am.

Q. Have you made the comparison yourself?

A. I did make the comparison.

Mr. Hupper: I offer this Exhibit 12-C in evidence.

Mr. McDowell: I object.

Examiner Robinson: Perhaps I misunderstood counsel and the witness. They were referring to Isbrandtsen contract and tariff. I assume it is the Isbrandtsen-Moller Company.

Mr. Hupper: Yes.

Mr. McDowell: I object on the same ground; it is irrelevant, immaterial, remote, and lacks probative value.

Mr. Cockrum: I join in the objection.

Mr. McGovern: We advance the same objection that we did to the earlier exhibits. Again, we make a distinction [fol. 1238] between facts and fiction, and to the extent this exhibit shows certain rates were in fact on file with the Commission, that may be a fact, and the exhibit may be competent to prove that fact. That does not, of course, mean the final conclusion set forth in the paragraph here is correct, because it is a conclusion, not a fact.

Mr. O'Connor: I would like to point up something.

Have you compared this second sheet with Exhibit 9 in evidence?

The Witness: I only compared it with the contract form Isbrandtsen had on hand.

Mr. O'Connor: You haven't made the comparison?

The Witness: I haven't.

Mr. Hupper: I know them to be different, Mr. O'Connor.

Examiner Robinson: All right. It is admitted in evidence as Exhibit 12-C.

(Document referred to, previously marked Exhibit 12-C for identification, was received in evidence.)

Mr. Hupper: Your witness.

Cross-examination.

Mr. McGovern: Mr. Examiner, as you may recall, at the conclusion of the hearing on Friday a week ago, it was suggested that perhaps counsel could get together and make available to counsel for the complainant here the minutes

[fol. 1239] of the Conference meetings on file with the Maritime Commission.

Pursuant to authorization to the Bureau of Regulations, which Mr. Andrews and Mr. Hupper very courteously furnished, such minutes were made available from the period after March 2, 1946 down to the present time.

In the course of examining those minutes, we picked up the fact that two letters had been apparently been received by the Conference and considered at two of the Conference meetings, and we transmitted that information to Mr. Hupper with the request that those two letters be made available, and I wonder whether or not the letters presently are available?

Mr. Hupper: I haven't them right at hand now, but I can get them during the course of the morning.

Mr. McGovern: I would like to have them available before the examination of Mr. Andrews is completed.

By Mr. McGovern:

Q. Mr. Andrews, may I assume you have a copy of the minutes yourself handy?

A. No, I have not. Mr. Hupper has my file.

Examiner Robinson: Suppose we have a 10 minute recess. I think this is a good time.

(A short recess was taken.)

[fol. 1240] Examiner Robinson: All right. Let us proceed.

Mr. Hupper: Mr. O'Connor, I have the minutes here.

Mr. O'Connor: I would like to take them home to look them over.

By Mr. McGovern:

Q. Mr. Andrews, do you recall that while Mr. Sinclair was on the stand I pointed out to him that in the pre-war period while he was Chairman of your Conference, that the contract rate system had not been applied straight across the tariff board which was now proposed, and that at about page 75 in the record he replied that in the pre-war period

the contract system had been applied to substantially all commodities moving in any volume in that trade?

A. I recollect some testimony——

Examiner Robinson: Mr. McGovern, just a minute. Did you say page 75?

Mr. McGovern: 752, I meant to say.

Examiner Robinson: I was going to say, he wasn't on that early.

By Mr. McGovern:

Q. On about page 752, I wanted to ask you, Mr. Andrews, whether that view of Mr. Sinclair's more or less corresponds with your own? Is it your judgment that during the pre-war period, say, from '31 to '39 the contract conference system was applied to all commodities moving in any [fol. 1241] substantial volume in the trade?

A. Well, it took in a substantial number of items, and it also embraced a number of items which were contracted at the tariff rates on which there were no non-contract rate basis on such items, which is a clear indication of the desire of shippers to be under contract, even without a non-contract rate basis. Now, I have checked my files pre-war and found that we had contracts on more than 700 tariff items, or 700 items in the tariff, and 345 of those were contracts made at the tariff rates. In other words, there were no non-contract rate features involved at all; the shippers just wanted to be contracted.

Mr. Galland: How many?

The Witness: There were over 700, and 345 of those were contract at tariff rates. In my judgment that was a clear indication of a desire of shippers to get under contract.

By Mr. McGovern:

Q. Yes. Well, I didn't ask you about that at the moment. I am concerned now with simply whether or not in your judgment, as Secretary of the Conference, at the time that Mr. Sinclair was testifying when he was Chairman, in your judgment whether the contract system did apply to substantially all commodities moving in volume in the trade?

A. This testimony I just gave would clearly indicate that now.

[fol. 1242] Q. Then, coming to your Exhibit No. 12-C, you show by that exhibit, do you not, that the——

A. Let me get a look at that 12-C.

Mr. Hupper: 12-C is the third one we marked this morning.

(Examiner Robinson handed a document to the witness.)

By Mr. McGovern:

Q. You show, do you not, on that exhibit, that the Isbrandtsen Company had granted contract rates on a substantial number of items for which there was no conference contract rate?

A. That is correct.

Q. Let us, for example, take the first item where you show no conference contract rate, that is acetone, the conference head, "no conference rate applicable to acetone," is that right?

A. That is correct. We had no contract/non-contract rate basis on acetone.

Q. Does that mean, in your judgment——

Mr. Galland: You mean, you had no non-contract rate on acetone?

The Witness: Yes, I so indicated in the exhibit.

Mr. Galland: I think Mr. McGovern asked whether he had a contract rate.

Mr. McGovern: I asked, or at least, I intended to ask Mr. Andrews whether it was not the fact that on acetone the conference had no contract rate.

[fol. 1243] The Witness: They had no contract rate.

By Mr. McGovern:

Q. Does that mean, in your judgment, then, that acetone was not moving in volume in that trade?

A. Not necessarily so, no.

Q. Well, let us come down to the next item, acid, boric, where your Exhibit 12-C reflects a contract rate in the Isbrandtsen tariff and no contract rate in the conference tariff. Does that mean again that that particular item was not moving in volume in the trade?

A. It could and it could not have moved. Without touching my records, I would have to go over it item by item.

Q. Well, at least this exhibit demonstrates, does it not, that since Isbrandtsen had a contract rate on file on that item, there was some of the article moving in Isbrandtsen's ships?

A. I think that is a reasonable assumption.

Q. So that——

A. (Continuing) And you can also assume that it may have moved also on the conference lines in greater volume.

Q. I appreciate that, but the fact remains that we can assume, can we not, that in all of these cases where the Isbrandtsen tariff, according to Exhibit 12-C shows a conference rate, that at least that item was moving in Isbrandtsen's ships?

A. I couldn't tell whether it was moving in Isbrandtsen's ships.

[fol. 1244] Q. Well, I take it that your earlier answer was that you could assume it was because there was a contract rate filed on it?

A. Could assume—I couldn't tell you whether it was a definite statement, whether it was moving in Isbrandtsen's ships or not.

Q. Well, do you know whether it was or was not?

A. Moving in Isbrandtsen's ships?

Q. Moving in Isbrandtsen ships.

A. I wouldn't know.

Q. The mere fact that there is no conference rate, contract rate filed for those articles does not indicate, you say, whether there was or was not movement on conference ships?

A. It is very possible there was a movement.

Q. And it is very possible, I take it, there was none?

A. Without checking the record, I couldn't tell you.

Q. Now, coming back to 12-A, you state in the attached document to the exhibit in the second full paragraph, "It will be noted that the attached schedule comprised substantially the principal commodities moving in volume to Belgium, Holland, and Germany. Now, with regard to the period covered by this exhibit, do you presume to know what commodities were moving in Isbrandtsen ships?

A. I didn't say that in the exhibit.

Q. Well, is it not possible that one of these commodities——

[fol. 1245] A. I made the statement that it covered the items moving substantially in the trade.

Q. Well, should you——

A. (Continuing) And I have records to that effect.

Q. To be accurate, should you not have limited that to movement via conference lines?

A. Not necessarily so, because I do know that it is moving in substantial volume in Isbrandtsen ships. I have particularly in mind the tobacco situation to German ports.

Q. Yes, I am not inquiring as to whether or not the 581 separate commodities also move in volume in Isbrandtsen ships, I am inquiring as to whether or not that list of 581 commodities, to your knowledge, is exhaustive of all of the commodities moving in substantial volume in the trade, whether by conference lines or non-conference lines?

A. My exhibits refers to the 581 commodities on that schedule.

Mr. Hupper: That is a comparison of the two tariffs, that is all that is, Mr. McGovern.

Mr. McGovern: Yes. The witness, I think, can resolve any ambiguities in my mind, Mr. Hupper.

Mr. Hupper: Yes, but one of your questions was a little indirect a moment ago, and I thought he ought to be warned on it.

Mr. McGovern: I think the appropriate way to warn a witness is to make an objection so the Examiner can rule [fol. 1246] upon it.

Examiner Robinson: Go ahead.

By Mr. McGovern:

Q. You have indicated, however, Mr. Andrews, in Exhibit 12-C that a considerable number of items move or were moving during that period on Isbrandtsen boats on contract rates, and you indicated that there was no reason to assume they were or were not moving via conference lines from the fact that there was no contract rate?

A. That exhibit didn't indicate in it that there was a movement on Isbrandtsen vessels.

Q. You indicated when I said——

A. (Interrupting) I merely showed a comparison of the contract and non-contract items at the time. There is nothing in that statement to show any movement.

Q. When I asked you whether or not, taking the item acetone as an illustration, whether or not the quotation of a contract rate by Isbrandtsen would indicate there was a movement of that commodity by Isbrandtsen rates, and you said you assumed that was a reasonable conclusion.

A. I still say it may be a reasonable conclusion.

Q. Do you assume that Isbrandtsen would file contract rates because he had no contract?

A. File contract rates where he had no contracts?

Q. Yes.

[fol. 1247] A. I didn't know whether he would or not, but if he didn't, then it wouldn't be on file with the Commission.

Q. That is what I am coming at, that he has filed a contract rate indicates he has made a contract for the movement of the commodity called for by that contract, is that right?

A. That is right, but there is no assurance he carried any business under that contract.

Q. But is it not reasonable to assume, I understand you don't know of your own knowledge, but is it not reasonable to assume where Isbrandtsen filed a contract rate with reference to a particular commodity such as acetone, that there has been a movement of that commodity on Isbrandtsen ships?

A. Why don't you ask Isbrandtsen? They are here.

Q. I am asking you. You are the one who put in the exhibits.

A. That's right. I am only making a comparison of rates.

Mr. Hupper: That is all he is doing, making a comparison of rates.

By Mr. McGovern:

Q. Do you, then, say now that you have no idea whatsoever what moves on Isbrandtsen ships, or do you know everything that moves on Isbrandtsen ships? Let's have it one way or the other.

A. During that period?

Q. During the period for which these exhibits were prepared?

A. No, sir, I don't think I could make any such general [fol. 1248] statement to that effect.

Q. So then when you select out of 1,863 items in the tariff, your own tariff, you select 581 and then make the categorical assertion that that number, 581, exhausts all the commodities moving in volume in the trade, you are talking without reference to possible movements of those commodities via Isbrandtsen vessels?

Mr. Galland: That is not what it states on the exhibit?

The Witness: I didn't say that.

Mr. McGovern: If counsel wants to object, I think it is appropriate to do so.

Mr. Galland: I object.

Mr. Hupper: I will put in a general objection.

Examiner Robinson: Go ahead.

Mr. Galland: He didn't say that exhausted the list of commodities.

Examiner Robinson: Go ahead.

Mr. McGovern: He is now testifying. He can say whatever in his judgment is the truth. I am merely trying to elicit facts.

Examiner Robinson: Go ahead. You can ask the question.

Mr. Hupper: We will find out later what moved on Isbrandtsen ships.

[fol. 1249] By Mr. McGovern:

Q. You have a statement in 12-A to the effect that, "It will be noted that the attached schedule comprised substantially the principal commodities moving in volume to Belgium, Holland, and Germany." Now, I point out to you, Mr. Andrews, and I assure you I am merely trying to elicit the fact that you have not limited that statement to movement via conference vessels——

A. I am just talking about the trade in general, not Isbrandtsen or conference lines.

Q. I understand, but you have included in that list only 581 commodities out of that total list of 1863, is that not right?

A. That is correct, and those 581 items are the main items moving in the trade in which Isbrandtsen has lower rates than the conference rates, and so stated in this exhibit.

Q. But does the 581 commodities out of the total list of 1863, to your knowledge, exhaust the movement of commodities in volume via Isbrandtsen vessels?

A. No, it doesn't. I have particularly one in mind as I just testified before, tobacco. Tobacco is moving in volume to German ports, also to Belgium and Holland, and it is not so stated in this exhibit. But the rates on tobacco are the same, conference and Isbrandtsen.

Mr. O'Connor: Now?

Mr. McGovern: I take it, then, that that conclusion——

[fol. 1250] The Witness: I don't know whether up to this minute until that tariff was filed, they were the same.

By Mr. McGovern:

Q. I take it, then, that that conclusion in Exhibit 12-A was not meant to reflect knowledge on your part that the movement of those 581 commodities also exhausted substantial movements of various commodities via Isbrandtsen vessels.

A. I was only talking of the 581 commodities in the trade without reference to——

Mr. Hupper: He hasn't testified to the movement at all. He knows nothing about it.

Mr. McGovern: That is all he has to say, Mr. Hupper.

Mr. Hupper: All right. He has said it about a dozen times.

Mr. McGovern: No, I want one clear-cut statement.

By Mr. McGovern:

Q. Mr. Andrews, at page 689 of volume 4 of the transcript, I asked, if you may recall, whether it would be convenient for you to give us a breakdown of the sailings for the year 1947, and I wonder if you have had an opportunity to get those figures?

A. Yes, I have, Mr. McGovern. I have the figures. I think you particularly asked for Black Diamond.

Q. I was trying to ascertain Black Diamond, but I think we asked for the entire sailings.

A. But I brought all of the sailings along in case you [fol. 1251] might want that information.

Q. Could you give me those for the year 1947 by lines?

A. I would be very glad to. Sailings, calendar year 1947:

Black Diamond Lines, 100.
Canadian Continental Line, 11.
Belgian Line, 30.
Cosmopolitan Line, 26.
County Line, 2.
Cunard, White Star, Limited, 4.
Ellerman's Wilson Line, 3.
French Line, 11.
Holland-America Line, 76.
Maersk Line, 24.
United States Line, 116.
Waterman Steamship Corporation, 89.
Watts Watts Line, 6.
Total 498.

Q. And that list, I take it, Mr. Andrews, reflects 498 berth sailings?

A. I am only talking liner berth service.

Q. Thank you very much, sir. Coming for a moment, Mr. Andrews, to the minutes of the North Atlantic Freight Conference that you are kind enough to make available for our determination last week, I notice that the minute of the meeting for March 7, 1946 reflects the minutes of a meeting of February 7, 1947. Does that mean, sir, that [fol. 1252] you had meetings throughout the period of operation by WSA.

A. Not in this trade, no.

Q. Well, the meeting of February 7, 1946, I take it antedated the return of the ship lines to private operation?

A. That's right. I think they got together in February, 1946.

Q. It is your recollection that that was the first meeting held since the suspension prior to the war?

A. I couldn't tell you at the moment. I could easily check it. I can tell you when the first meeting in this

trade was held, but I was only asked to get these minutes from March, 1946, which I have done.

Q. I know you were, and we had assumed that during the period of operation by the War Shipping Administration that the function of the conference was largely suspended.

A. Well, just give me a minute to look at some records I have here, and maybe I can help you out. (Examining documents) Yes, we have had meetings back as far as '45, November, 1945.

Q. Well, just as a matter of fact, Mr. Andrews, is it your recollection that the conference did hold meetings, regular or periodic meetings during the period of war operation?

A. They held meetings. I wouldn't say that they were regular meetings, stated meetings, they got together when something important came before them.

Q. Now, from testimony elicited from you by Mr. Hupper, and particularly from your testimony at page 557 of the [fol. 1253] transcript, I got the impression that you described the meetings of the conference as being monthly meetings, is that correct?

A. We generally try to hold them once a month.

Q. I ask that question because I noticed in going over the minutes on file with the Commission, that I could find no minute for July or August of '46, February, July, or August for '47, and February, July, or August for '48.

A. Well, we try to dispense with meetings during the summer, but it is not always possible.

Q. Does that explain this February absence?

A. Well, it may be that—what period are you talking about?

Q. February '47 and February '48.

A. Well, see, we try to, as a courtesy to the lines, operating from Canadian ports, we like to get up there about three times a year to hold our meetings in Montreal, because their rate committee comes down to meet with our rate committee every meeting we hold in New York, and sometimes it is not convenient to get them together. But we endeavor to hold monthly meetings.

Q. Well, am I clear now in assuming from what you say that if a meeting was held in Canada for the convenience

of the Canadian members there, there were no minutes of that meeting filed?

A. Oh, yes, they are right there. It shows there. (indicating)

[fol. 1254] Q. Well, then the February hiatus was merely because of the inconvenience of traveling back and forth?

A. If there is no minute of the 1947 meeting, there was not meeting, then, because the minutes are numbered numerically and they show the dates.

Q. I gathered that, and I merely wanted to be certain on that.

A. If there was no minute of the February, 1947—there was no meeting held, no regular meeting.

Q. I merely wanted to be sure, Mr. Andrews, that if there were no minutes on file with the Commission that no meeting had been held that month, is that right?

A. That is correct.

Q. And you recall, that earlier in your examination I asked you what generally was the capacity of the lines' representatives who attended the meetings, and you answered at page 671 that generally, personnel from the freight traffic manager up represents the lines involved.

A. That is correct.

Q. Now, I wondered if, merely to illustrate that point, you would take your meeting of March 7, 1947 and identify the personnel present there, beginning with J. J. Ryan for Cosmopolitan.

A. At that time, Mr. Ryan, as I understand, was traffic manager, and Mr. Zagat was traffic manager; Mr. O'Connor, I think, is assistant traffic manager of the Cunard White Star, Mr. Patterson is Secretary and Treasurer of the [fol. 1255] Ellerman's Wilson Line, Mr. Van Ryn was freight traffic manager, Mr. George Kohl was manager of the Continental Service for the United States Lines freight department.

Q. May I interrupt you there, Mr. Andrews, to say that subsequent minutes show that a Mr. T. E. McIntyre frequently attended for United States. What was his capacity?

A. He is general foreign freight traffic manager. And at the meeting March 10, 1949, Mr. Heyrman, of the Belgian Line, is shown as present. He is the head of the Atlantic

Overseas Company, who are general agents for the Belgian Line.

Going back to your original March 7th minutes, do you want me to continue and give you some more?

Examiner Robinson: Yes, go back to March 7th.

By Mr. McGovern:

Q. You might go down the rest of the list. The next one is Waterman Steamship.

A. Mr. Kraak—I am sorry, I can't give you his title at that time. There had been some changes, but he is now the traffic manager, I understand, of Waterman, or manager of that particular service.

Examiner Robinson: I don't know how complete you want your records. In some cases the name of the company is mentioned, and in some instances the name of the person. Do you want them both in there?

[fol. 1256] Mr. McGovern: I was just following down the list myself of the companies present.

Examiner Robinson: The record won't show it.

Mr. McGovern: No, the record won't show it.

Examiner Robinson: I think you had better put that in.

The Witness: Mr. J. J. Ryan represents the Cosmopolitan Line; Mr. Zagat represented the Belgian Line; Mr. O'Connor represented the Cunard White Star, Limited; Mr. Patterson represented Ellerman's Wilson Line; Mr. Van Ryn represented the Holland-American Line; Mr. George Kohl represented the United States Lines; Mr. Kraak, Waterman Steamship Corporation.

By Mr. McGovern:

Q. Now, Mr. Andrews, without referring to particular minutes, is it not true that the minutes for the entire period from March 2, 1946 down to April of 1947 reflect that during that period six new lines, namely, Black Diamond, Canadian Continental, Watt, Limited, Moller, French Line, and South Atlantic, were admitted to the conference?

A. No, that is not correct. During that period of March, 1946 the scope of our basic agreement embraced Canadian

ports as well. Subsequently, the Canadian lines withdrew and established their own conference with headquarters in Montreal.

Q. Yes, I was coming to that in a moment, but in the first instances it is true, is it not, the Canadian Continental [fol. 1257] and Watts Watts were admitted to the conference in this post-war period?

A. Let me have that question again.

Q. I say, I am coming to the withdrawal in a moment, but it is true, is it not, that in this post-war period, this Canadian Continental and Watts Watts were admitted to the North Atlantic Continental Freight Conference?

A. I think that is a correct statement.

Q. And in addition, Black Diamond, Moller, French Line, and South Atlantic were also admitted?

A. That is not entirely correct, because Black Diamond was a member pre-war. The others, I would say substantially came in after the *secession* of hostilities abroad.

Q. But the fact remains, does it not, that the Black Diamond Line had to appeal to the Commission in Docket No. 643?

Examiner Robinson: Let's get that straight. I happened to be the Examiner in that case. There were about six different Black Diamond organizations, so I don't know whether you are trying to get at which one it was.

Mr. McGovern: I am trying to get at the one the minutes reflect was the one admitted to the conference post-war.

The Witness: Well, you have got to go back on the record and deal with Docket 635, where the Commission directed that only the corporations, and not the agents, the members of conferences, and that was one of the points brought out in [fol. 1258] this Black Diamond membership question.

By Mr. McGovern:

Q. Yes, but your minutes reflect in this picture, and I will bring out the precise minute if necessary, your minutes reflect that a Black Diamond Line was admitted to conference membership.

A. That is correct, they were subsequently admitted to conference membership.

Q. Which Black Diamond——

Mr. Hupper: What has that got to do with this case?

Mr. O'Connor: You have been saying everybody could walk right in and would be invited in, but Black Diamond had to file an appeal to get in this conference.

Mr. Hupper: I remember that.

Mr. O'Connor: The same as Lykes had to bring four actions.

Mr. Hupper: All right, I object to any testimony about why or why not people did or did not get into the conferences. That has nothing to do with this case.

Examiner Robinson: We can all assume it was one of the Diamond organizations. Does that satisfy you—and they had to get in by force of the Commission's direction. Is that what you want?

Mr. McGovern: Mr. Examiner, I point out to you I didn't inquire of the witness why they got in, I was trying to [fol. 1259] find out whether they got in.

The Witness: Mr. McGovern, I have nothing to hide here. I will be very glad to give you all of the facts.

Mr. McGovern: I am sure that is right, Mr. Andrews, and I think if we can just ask and answer the questions——

Mr. Hupper: I object to any facts put in here that have no possible relevancy to this case.

Mr. McGovern: Well, the fact I started out to elicit, Mr. Andrews, was that since the war, in other words, since March 2, 1946, six members have been admitted to the North Atlantic Continental Freight Conference, the six I mentioned.

The Witness: Well, I couldn't tell you whether the number is correct without looking at the record.

By Mr. McGovern:

Q. You don't know whether more or less were admitted?

A. I could tell you by looking at the record.

Q. Well, let me ask you this, do you recollect that the six I have mentioned, namely, Black Diamond, Canadian Continental, Watts Watts, Moller, French Line, and South Atlantic were admitted to the conference?

A. That is correct.

Q. Now, it is also a fact, is it not, that in that same period the three Canadian lines, namely, the County, Watts Watts, and Canadian Continental withdrew from the conference?

[fol. 1260] A. What period are you talking about?

Q. The period between March 2, 1946 and April 1948.

A. That is correct.

Q. Now, reverting back for a moment, Mr. Andrews, to the minute of the meeting on March 7, 1946, it contains among other notations, does it not, the notation, "Applications for modifications or establishments of rates"?

A. That is correct.

Q. And then under that you have a list of rate adjustments which were apparently agreed upon at that meeting.

A. It so states in the minutes.

Q. Now, since March 7, 1946 meeting, which was the first meeting under private ownership after relinquishment of the ships by the War Shipping Administration, what tariff were you using with reference to which the particular modifications or adjustments were made?

A. What tariff? I think it was Tariff 17.

Q. That was the tariff that the War Shipping Administration had been operating under, was it not?

A. (Examining a document) I am not sure of the number, but I feel reasonably certain it was Tariff 17.

Q. What was the effective date of Tariff 17, if you know?

A. Offhand, I don't know. I could get it for you very easily.

Q. Will you give us an approximate estimate that would be reasonably accurate in your judgment?

[fol. 1261] A. Let me see what I can—(examining document)—No. 17 became effective in late 1944 or early 1945.

Q. In other words, it became effective during the operation of the ships by WSA?

A. That is correct. As a matter of fact, it was submitted to the WSA and approved by them.

Q. And you said the best you could estimate was late '45—I mean, late '44 or early '45?

A. That is right. It had been submitted to the Commission and approved,—not the Commission, but the WSA.

Q. Then it is accurate, is it not, to characterize that tariff as a WSA tariff?

A. We don't designate it in our tariff, no.

Q. It had to be approved, though, did it not?

A. That's right, it was approved December 21, 1944 by the WSA.

Q. Well, is it your view that the conference was operating in filing its own conference tariffs for the commerical transportation of cargo in December of 1944?

Mr. Hupper: I object to that question as having nothing possibly to do with this case. Since October, 1948 we have got a proceeding pending here against some people who are members of this conference.

Examiner Robinson: The objection is overruled.

The Witness: May I hear the question again?

[fol. 1262] By Mr. McGovern:

Q. Well, is it your view that the conference was functioning and filing conference tariffs for the movement of commercial tonnage on December 21, 1944?

A. There was some commercial business at that time, yes.

Q. But that tariff, I assume, was a general tariff not confined to the movement of commercial cargo?

A. It wasn't restricted to commercial or Government cargo, it covered a commodity or cargo moving in that trade.

Q. Isn't it a fact, that in December of '44 all operation was by the War Shipping Administration?

A. Not necessarily so.

Q. Was there a private commercial operation in December 1944?

A. You might have had other governments.

Q. Well, can you testify of your knowledge whether or not any of the conference members were conducting private operations in December of '44?

A. I couldn't testify, no, without——

Q. That Tariff No. 17, I take it, was the tariff that had been filed with the War Shipping Administration and approved by the War Shipping Administration?

A. Concurred in by the WSA.

Q. Well, it had at least——

A. (Interrupting) That is a term they used in their letter to us.

[fol. 1263] Q. Very well, at least, it was a tariff that was used by the War Shipping Administration, was it not?

A. It was used by the member lines.

Q. Pursuant, I take it, to the authorization from the War Shipping Administration to operate?

A. The WSA concurred in the rates in that tariff.

Q. Now, I take it, then, that when private operation was resumed after March 2, 1946, that that tariff was used as the basis for your operations. Specifically, what I am coming at, Mr. Andrews, and I am not trying to trip you at all, is that your March 7, 1946 minutes reflect these adjustments?

A. That is correct.

Q. And I see no reflection here of the adoption of a wholly new tariff of any kind, for I assume that these adjustments were made with relation to some existing tariff?

A. That was Tariff No. 17.

Q. Which had been adopted in December of 1944?

A. That is correct—concurred in by the WSA.

Q. Do you think it was reasonable for the conference to continue over into peace-time operations for commercial tonnage a tariff that had been designed to handle movements in time of war?

Mr. Hupper: I object to that question. It has no relevancy here, what was reasonable for the conference to do. The lines were proceeded against only in October, 1948.

[fol. 1264] Mr. McGovern: I think it is extremely relevant.

Examiner Robinson: Are you trying to get the fact that the tariff they put into effect was at a certain level and the non-conference rates were higher? Is that what you are talking about?

Mr. McGovern: No, sir, I am not coming at that I am really trying to get at a fair test of the credibility of the comparisons made in these exhibits, and I think that that will appear in a moment. All I am trying to ascertain now is what was the basis used by the conference, the general tariff basis employed by the conference with which the witness has already made comparisons of Isbrandtsen rates.

Examiner Robinson: Well, I think you are entitled to have that information. The conference members have had some pretty broad liberty.

Mr. Hupper: The tariff is just a gathering of words constituting classification as a result of long experience over the years. What difference does it make? We might have used other words, or fewer, or more.

By Mr. McGovern:

Q. I am asking Mr. Andrews, whether, in your judgment it was reasonable for the conference to employ this tariff filed December 21, 1944——

Mr. Hupper. I object to the question asking him as to what was reasonable.

[fol. 1265] Mr. McGovern: Well, Mr. Hupper, you have already objected, and I understand the Examiner overruled your objection.

Mr. Hupper: It isn't his function as to what is reasonable.

Mr. McGovern: I assume it is the Examiner's function to rule whether or not the witness may answer the question.

Mr. Hupper: I object to the question as to what is reasonable.

Examiner Robinson: Overruled.

Mr. Hupper: It is what they did do.

By Mr. McGovern:

Q. Now, Mr. Andrews, was it reasonable when the ship lines were returned to private operation after March 2, 1946, for the members of the North Atlantic Continental Freight Conference to continue to use a basic tariff that had been adopted December 21, 1944 during the war and which, of course, reflected various war conditions?

A. I think it a reasonable way of handling business, because we treated all cargo alike, whether it was Government or commercial cargo, and set up commodity rates, even though it was shipped by the Government. Those tariffs are a continuation of the tariffs which were in effect prewar, and it may interest you to know that our tariff just before Holland and the Low Countries were invaded, the rates in those tariffs were higher than the rates which we [fol. 1266] adopted when we re-established the conference tariffs in this trade.

Q. Well, now, sir, if it were reasonable for the conference

to employ that tariff that had been approved by WSA on December 21, 1944 for private operation immediately after the return of the ships to private hands, was it not equally reasonable for Isbrandtsen Company to employ the same tariff as the basis for its operations in that period?

Mr. Hupper: I object to that question on the same ground.

Examiner Robinson: Overruled.

Mr. Hupper: Nobody is charging that Isbrandtsen is unreasonable in adopting its form of tariff.

Mr. McGovern: What is your answer, Mr. Andrews?

The Witness: I would like to have the question again.

Examiner Robinson: Read the question to him, please.

(The pending question was read by the reporter.)

The Witness: Well, it must have been reasonable, because Isbrandtsen adopted them.

By Mr. McGovern:

Q. Well, I take it from the somewhat invidious characterizations that you have included in your Exhibit 12-A——

A. They weren't so construed by me.

Q. They weren't so construed by you?

A. I just merely gave you the facts in the case of a period on file in Washington.

[fol. 1267] Q. Well, with regard to the probative value of those particular facts, let's assume that they are facts, is it not the fact that Isbrandtsen on March 2, 1946 went down to the Commission and made a photostatic copy of the War Shipping Administration's tariff, it would resemble word for word your tariff because you had done the same thing?

A. It wasn't a WSA tariff, because I testified it was the conference lines tariff of the lines operating that trade.

Q. It was approved by WSA?

A. It was concurred in by the WSA.

Q. Well, does that mean approval, or are we merely bickering with words?

A. I am using the words that the WSA advised me when the wrote to me.

Q. Suppose WSA had not concurred, could those tariffs have any effect?

Mr. Hupper: I object to that question, to suppose something that is not a fact in this case. Everybody knows what a concurrence is.

Mr. McGovern: It is a hypothetical question, Mr. Examiner, designed to test the credibility of the witness.

Examiner Robinson: I don't think that has any relevancy. I will sustain the objection to that.

[fol. 1268] Q. It is a fact, then, is it not, Mr. Andrews, that in the period immediately after March 2, 1946 the Conference used as a basic tariff the tariff that had been filed on December 21, 1944 when the shipping was largely in the control and out of the War Shipping Administration?

A. You have got too many thoughts in there which are contradictory.

Q. Well, would you undertake to unscramble them?

A. You had better unscramble them. You are asking me the question. I will be very glad to answer any question, but you are talking about before the war and then after the war.

Q. Tariff No. 17 was filed on December 21, 1944, was it not?

A. That is correct.

Q. And Tariff No. 17, which had been filed on December 21, 1944 was used by the Conference as the basis for its rates in the period succeeding March 2, 1946; is that correct?

A. Succeeding? Yes.

Q. Now, the fact is also, is it not, that that Tariff No. 17 had included charges for such things as War Risk Insurance, and Bonus Payments to seamen, it reflected the high cost of oil during the war, and so forth?

A. It wasn't stated in the tariff, but it reflected the cost of operating vessels at that time.

Q. Now, coming to your minute of the meeting of March [fol. 1269] 2, 1946—I mean March 7, 1946, I beg your pardon—under that list of modifications of rates to which agreement apparently had been given, the minute reflects over in the righthand side, Mr. Andrews, the notation, "Plus 15 per cent surcharge." Will you explain that item, please?

A. When the tariff was submitted to the WSA it had

provision therein for a surcharge of 15 per cent, which surcharge was also applicable in the French and the UK trade at the time; and, incidentally, the rates in 1944 reflected the rate basis also to adjacent trade like the the UK and the French Atlantic ports.

Q. So that, Mr. Andrews, in carrying over this 15 per cent surcharge at this meeting on March 7, 1946, you were, in your judgment, merely carrying over a surcharge that was already applicable in Tariff 17?

A. It was included in Tariff 17.

Q. Now, immediately succeeding the list of commodities for which rate adjustments were granted, there is another column with the notation, "Declined." I assume, Mr. Andrews, those were applications for adjustments to rates to which concurrence was not given by the Conference, is that correct?

A. Those were applications for adjustments in rates which didn't receive the approval of the Conference Lines.

Q. And your earlier testimony, as I recall, was to the [fol. 1270] effect that by virtue of the Conference unanimous voting rule, these particular rate adjustments could have been vetoed by a single foreign line, is that possible?

A. It could have been, but normally speaking, or generally speaking, that is not correct.

Q. In short, if we might use an illustration, an application, let us say, by Anaconda Copper for an adjustment in the rate on manganese copper could have been vetoed by the Cunard Line?

A. I don't recall any such veto.

Q. I am asking merely as an illustration.

Examiner Robinson: He just merely means that any one line could do it.

The Witness: Well, I testified before, it could be, but he was asking me definitely on this commodity on the Cunard Line, and I am answering him.

Examiner Robinson: Well, I understand him to mean a theoretical question.

By Mr. McGovern:

Q. Well, now, you also testified earlier, and I am merely trying to illustrate your testimony, you testified earlier that rate adjustments that were declined were contained in these minutes submitted to the Commission, but that the actual vote of the membership with regard to the particular rate application involved was not reflected on the face of [fol. 1271] these minutes, and that is the fact, isn't it?

A. Well, we have seen the minutes and it confirms my previous testimony.

Q. Yes. Now, on your direct examination you indicated in response to a question from Mr. Hupper that the Conference went out of its way to keep the Commission intimately informed of its operations and activities——

Mr. Hupper: There wasn't any such question by me. The minutes were sent to the Commission.

Mr. McGovern: I will withdraw the question, Mr. Andrews, and as soon as I can check the transcript, I will ask it again.

By Mr. McGovern:

Q. Don't you think, Mr. Andrews, that the Maritime Commission might be interested in information showing who was responsible for the refusal of the adjusted rate on manganese copper?

Mr. Hupper: I object to that.

Mr. Galland: I object to that on the ground that the Maritime Commission can look after its own interests in supervising Conference activities.

Examiner Robinson: I will sustain the objection.

By Mr. McGovern:

Q. On the face of these minutes, then, Mr. Andrews, it would be impossible to tell, would it not, who among the [fol. 1272] Conference membership vetoed particular requested rate adjustment, and why the rate adjustment was declined?

Mr. Hupper: I object to that. Everybody may have vetoed it, one, or none.

Examiner Robinson: Overruled. Go ahead.
The Witness: May I have that question again?

By Mr. McGovern:

Q. Specifically, Mr. Andrews, I asked whether it was not the fact that the information contained on the face of your minutes would not reveal what lines were responsible for the declination of a rate adjustment and the reasons why the rate adjustment was declined?

A. The minutes don't reflect that information.

Q. Mr. Andrews, may I ask whether the Conference minutes are filed by you with the Maritime Commission because such filing is required by the Commission, or because you voluntarily send them to the Commission for its information?

A. Well, we will have to go back on past history. Previous agreements never made provision for the filing of minutes with the Commission, but I have always filed those minutes, and I write the Commission a special letter that the minutes are sent them for their information and to have the necessary authority I do put it in all basic agreements of the various Conferences that we will file minutes with the Commission.

[fol. 1273] Q. Well, coming to my question, specifically, is it then your own view as Chairman of this Conference that you file those minutes voluntarily and merely as a matter of courtesy on the part of the Conference?

A. I file them subject to the basic Conference agreement.

Q. You are referring now to 4490?

A. I am.

Q. And does that contain on its face a requirement that the minutes shall be filed with the Commission?

A. I believe it does.

Q. I just don't know. I would like the information, if you have it.

A. Well, I make it a point in any basic agreements to put that provision in there.

Mr. Hupper: Well, you file them anyway, don't you?
The Witness: Oh, yes.
Mr. Hupper: The agreement will show it, whether or not it is a provision.

By Mr. McGovern:

Q. I see, Mr. Andrews, under sub-paragraph 3 "Conference Tariffs, Rules and Regulations, and Contract Rate Lists, Supplements thereto, and reissues thereof and minutes of meetings shall constitute a complete record of matters dealt with."

[fol. 1274] I am sorry; I thought you said that should be filed with the Commission, but it doesn't state that.

A. I think, Mr. McGovern, if you let me look at it, maybe I can pick it out.

Q. Well, could you examine that during the lunch hour, sir?

A. I can examine it now.

(Mr. McGovern handed document to the witness.)

The Witness: I don't see it in there, but I was laboring under the impression it was in there. Of course, this is an agreement made in '35, but any new agreements we do make provisions for them, for the minutes to be filed with the Commission.

By Mr. McGovern:

Q. Well, Mr. Andrews, you can further check your recollection.

A. In any event, whether it is in or out, I do furnish the Commission with a copy of the minutes at the same time they are furnished to the member lines.

Mr. O'Connor: Is there any opportunity to agree as to whether there is any rule on or requirement of the Maritime Commission to file the minutes?

Mr. Hupper: There is something in the law that gives the Commission the right to acquire them, and I think it has been a matter of regular practice to send them in.

[fol. 1275] Examiner Robinson: We can get them under Section 21 if we want to make that order, but I don't think there has been a definite order by the Commission that they be filed.

Is that your understanding, Mr. Galland?

Mr. Galland: I have understood that it is an informal condition attached to the approval of these agreements

that the minutes of the meetings were filed. I have never seen any regulation in print which requires that they be filed.

Mr. O'Connor: Do you mean by that that the Commission would not approve an agreement, Conference Agreement, unless the provision is in there that the Conference will file the minutes? Is that your understanding?

Mr. Galland: Say that again, please.

Mr. O'Connor: Is it your understanding that the Commission will not approve a contract agreement unless it contains a provision that the Conference will file the minutes?

Mr. Galland: Well, I assume Agreement 4490 is proof of the contrary, but I understand the practice to be that if the Commission should encounter any difficulty in getting regular filings of these minutes, that measures would be taken to insist that they be filed and that if then they were [fol. 1276] not filed, further measures might be taken for the revocation of approval.

Mr. McGovern: May I say, Mr. Examiner, I was merely attempting to elicit the fact from the witness if he knew, and I also toss in this gratuitous remark, that it is my own understanding the Bureau of Regulation takes the position that they cannot compel the filing of these minutes.

But getting back to the witness, if we may——

Mr. Galland: They get them, I know that.

Examiner Robinson: Let us adjourn for lunch.

Mr. McGovern: I would just like to ask a couple of additional questions to finish this off.

By Mr. McGovern:

Q. Mr. Andrews, before we conclude for lunch, may I just ask, does the Conference itself keep any notes or tabulations of the actual votes on these various rates that are declined?

A. Not on all applications.

Q. Not on what, sir?

A. Not on all applications, whether for rate adjustments or for any other purposes, but there is nothing to prevent the lines calling for a secret vote if they want to.

Q. And are the rates, the adjustments which are from

time to time declined by the Conference, is it not reasonable to assume that shippers who fail to achieve that rate [fol. 1277] adjustment may take their case to the Isbrandtsen Company and seek a similar adjustment from Isbrandtsen?

Mr. Hupper: I object to a question of that kind. What a shipper may do with Isbrandtsen, they have got a complete right to do anything they want to.

Examiner Robinson: Well, I think that speaks for itself, doesn't it?

Mr. McGovern: All right.

Examiner Robinson: We will adjourn until 2:30.

(Whereupon, at 12:15 p. m., an adjournment was taken until 2:30 p. m.)

[fol. 1278] Afternoon Session

2:30 P. M.

Examiner Robinson: We will proceed, if you are ready.

Mr. Hupper: If the Examiner please, I have asked to suspend with Mr. Andrews for the time being in view of my having two witnesses for this afternoon who would not be available tomorrow and it would be inconvenient for them to hold over pending the conclusion of Mr. Andrews' testimony.

The first of those two witnesses is Mr. Rosenthal.

Examiner Robinson: Very well.

Morris S. Rosenthal was sworn and testified as follows:

Direct examination.

By Mr. Hupper:

Q. Mr. Rosenthal, will you kindly state your name and address?

A. Morris S. Rosenthal, 285 Madison Avenue, New York City.

Q. What is your business?

A. I am president of Stein, Hall & Company, Incorpo-

rated, importers, manufacturers, and exporters; and I am also president of the National Council of American Importers.

Q. What kind of an organization is that, the National Council of American Importers?

A. The National Council of American Importers has [fol. 1279] about 600 members resident in something over 20 states, importing manufactured goods, raw and crude materials.

Q. Are you in the exporting business to any extent?

A. Our company exports to a small extent.

Q. Your imports are more than your exports, as I understand?

A. Substantially more.

Q. Is that business of export and import to some extent in the transatlantic trade between North Atlantic ports and the ports in the Antwerp-Hamburg range?

A. Yes. We export some, and we import from those various ports, including Rotterdam.

Q. Have you any connections besides Stein, Hall & these organizations you mentioned?

A. I am a member of the Foreign Commerce Committee of the Chamber of Commerce of the United States, and I am Chairman of two committees of the United States Council of the International Chamber of Commerce, and a member of the Import Advisory Committee to the Department of Commerce.

Q. Have you ever been in educational work?

A. I taught for over 20 years in Columbia University on exporting and importing.

Q. Are there any other connections you have that would interest us now?

A. Some other committees very much like those I mentioned.

Q. In your connection with Columbia University, what [fol. 1280] special subjects, if any, did you explore and teach?

A. One course consisted of the techniques of foreign trade which included shipping, marine insurance, customs regulations, cable codes, and finance; and in addition I taught courses on the selling of goods abroad and buying goods abroad for import into the United States.

Q. In the course of your business and your connections, as you have just described them, have you had meetings from time to time with shippers, shipping men, including representatives of ocean carriers?

A. With a great many shipping men and on my committee work, a good many exporters and importers.

Q. Have you, during these years you mentioned, and the connections you have mentioned, made any particular study and come to any particular conclusion as to the characteristics of ocean steamship trade on this route between North Atlantic ports and European ports?

A. Yes, sir.

Q. Will you describe for us briefly what you understand to be the general characteristics of that shipping trade?

A. Well, we have signed from time to time contracts issued by the steamship conference, and we have understood that it has obligated us to ship the goods which, under our contracts for sale and purchase, we have the obligation to prov-de the freight space and direct the movement over [fol. 1281] the lines of the members of the conference.

Q. In the foreign steamship trade, is there any characteristics, let us call it, in respect of the necessity of stability of rates as between competing carriers?

A. In my judgment, there are two basic reasons for stability of rates. One is that stability of rates assures the small trader an opportunity of competing in the cost of the transportation with the large shipper, who otherwise might be able to drive an individual bargain, and thereby obtain a lower freight rate because of the larger amount of tonnage available in his business. The other is, inasmuch as a great deal of foreign trade is transacted on the basis of firm offers made by exporters to their buyers abroad, stability of ocean rates means much to exporters and importers in their buying and selling operations.

Q. If I understand what you have said just now, stability of rates puts the small shipper, the man who is in the exporting business in a modest way, comparatively speaking, on the same basis of cost in getting his goods to a foreign port as the other shipper who may have 10 or 100 times as much to ship?

A. Yes, sir.

Q. Do you consider that a desirable and necessary feature?

A. I do.

Q. In the commerce of the United States?

A. Yes, I do. I always have. When the matter was dis- [fol. 1282] cussed at the last meeting of the Board of Directors of the National Council Importers, when I informed my fellow directors of my intent to testify, the other members of the Board authorized me to express that as their opinion, as well as my personal opinion. That we believe that in the field of competing—if I may expand——

[fol. 1283] Q. Go ahead.

A. I think it important that in the field of competition that there are certain services which exporters and importers obtain from transportation agencies which should be on an equal basis for all who compete, for otherwise the small trader can't possibly stay in business, and that would be equally true in the field of domestic transportation, if there were not uniform trucking and railroad rates to all, based on carload or less than carload quantities, and so forth, because if the small chap has to pay a higher freight rate than the larger merchant or manufacturer, he is not going to be able to compete in most of the trades of the world. That is true, perhaps, in the raw material trades, where a great deal of business is done on gross profit of from one to three per cent, but it would be equally true of importers and exporters of manufactured goods, because there, too, the margins of profit are not large enough to allow the different costs of transportation to different competitors.

I just think that is an extremely important thing, and is a contribution that the steamship Conference system and its contract rates gives to the small operator.

I saw in 1940 and 1941, when freight space was scarce because so many vessels were being sunk by submarine warfare, or were being withdrawn then by the European [fol. 1284] nations, how difficult it was for a great many small exporters and importers to obtain freight space in comparison with the larger ones, that had large volume prewar and were again possible post-war shippers.

In one trade where our company is active, we worked out

with the Conference an allocation of freight space. It was done willingly by two or three of us who are the largest shippers in that trade, in order to protect the small ones, and see to it they were able to stay in business at a time when they might not have been able to obtain freight space.

I think it goes down through the line. I think uniform costs of transportation are essential.

Q. Well the transportation item of cost is an important feature, is it not, in the value of goods laid down out of one port into another port or place?

A. A very substantial part.

Q. And does that characteristic reasoning, or statement of fact, apply both ways, that is, the eastbound shipments and westbound shipments, and vice versa?

A. From the commodities which I have dealt with, as well as a good many other commodities that I have heard talked about by different foreign traders, I think the transportation cost is frequently a very substantial part of the landed cost.

[fol. 1285] Q. You came here today at my request, did you not?

A. Yes, sir.

Q. To testify?

A. Yes, sir.

Q. And before you did that, you discussed the general situation with your fellow directors?

A. Yes, sir.

Q. In—what council was it?

A. The National Council of American Importers.

Q. And you had their authority to come and to express their views as being substantially the same as yours, did you?

A. Yes.

Q. Now, near the opening of your testimony, did you say that your company, Stein, Hall, itself had contracts with the members of the Conference Lines?

A. I know that we have a contract with the Westbound Conference. I believe that we have a contract with the Eastbound Conference, as well. I know we have contracts with a great many other Conferences serving other parts of the world.

Q. Generally speaking, is it true that your company favors the so-called contract-non-contract rate system?

A. In principle, yes. If I might dilate on that——

Q. Go ahead.

A. I haven't given much thought to what the differential [fol. 1286] should be between contract and non-contract rates, nor have I given much thought as to what the situation should be if a shipper who has a Conference contract breaches the contract.

I know if there is a merchant, someone with whom I have a contract, who breaches the contract, I am entitled to reasonable damages. In fact, I don't think in those terms. I think I should live up to a contract.

Q. In other words, you favor living up to the contract rather than being in the situation where damages are even talked about?

A. I favor that very much. But if situations arise, I believe that damages are proper if people breach their contracts.

Q. Well, you mean—all you are willing to say, and nobody critizes you for that, is that you are talking about a situation that is reasonable?

A. Correct.

Q. And you say the same, I suppose, as to differential between the contract and the non-contract rates?

A. Yes, sir.

Q. You wouldn't want to be specific as to what that differential should be, I take it?

A. I haven't given the matter enough thought to be specific.

Q. But if you can assume that the differential is rea- [fol. 1287] sonable, and that the provision for damages for breach of the contract is reasonable—assuming those two features, then you are distinctly in favor of the contract rate system, I understand?

A. Yes, sir.

Q. Do you want to make any exceptions to that general summation of it?

A. No, sir. There might be other phases of the Conference system where I haven't always been in complete accord with members of the Conference, certain phases of it that I don't think germane to this discussion.

Q. That is, to help the state of affairs.

A. But in so far as the contract rate system goes, I am in favor of it in principle, as I say.

Q. Assuming it to be reasonable.

A. Assuming it to be fair and reasonable.

Q. Do you know of any other system or method of rate making as between steamship carriers that choose to associate themselves in Conferences with the approval of the Maritime Commission that is better calculated to produce the stability and preserve the rights of the small shippers versus large shippers, and so forth?

A. No, sir, I have never heard of one advanced.

Q. Are you prepared now to suggest to this hearing any method that seems to you more to the general benefit of [fol. 1288] shippers and the commerce of the United States?

A. No, sir.

Q. How long have you been familiar with the contract rate system?

A. I have been active in foreign trade since 1917. I think from the inception of the Conferences, shortly after the Shipping Act of 1916, I have had occasion to deal with Conference, and study their contracts, and work with them in the carriage of goods.

Q. Have you, generally speaking, found them cooperative in dealing with the representation of the shippers?

A. On the whole, yes. There have always been exceptions when they and we were not in accord.

Q. You have been able to talk things over?

A. Yes, sir. I haven't always gained my point.

Q. And they haven't always gained theirs, either?

A. No.

Q. Have you, yourself, examined the Shipping Act of 1916 in connection with your lectures at Columbia University?

A. Yes, sir.

Q. Did you ever read the so-called Alexander Committee Report that came out of the investigation some three or four years before the Shipping Act was passed?

A. No, sir.

Q. You have not?

[fol. 1289] A. No, sir.

Q. But you have read the statute?

A. I have read the statute.

Q. You said you had been lecturing at Columbia University some 20 years?

A. Yes, sir.

Q. Was it any part of your course of lectures to deal with the characteristics of the Shipping Act?

A. Yes, sir. From a layman's point of view, I would try to explain the Steamship Conference System as I understood it. I would discuss the clauses in certain Steamship Conference contracts with my class, and I would then discuss certain of the clauses of the bill of lading, in an attempt to interpret, as a layman, what the responsibilities of the ship owner were, and what the responsibilities and obligations of the shippers were.

Q. Where did you get hold of the Conference agreements?

A. The freight contracts?

Q. No. The Conference agreements, you said.

A. Oh, I have obtained copies of the Conference agreements from different Steamship Conferences when I have asked for them.

Q. And likewise, bills of lading?

A. Likewise bills of lading, and also the over-all freight contracts that the Conference makes, which are then sub-[fol. 1290] ject to the terms of carriage of the bill of lading. And whenever I have asked a particular Conference for copies of those, I have had no trouble in getting them.

[fol. 1291] Q. So, in the course of your lectures, you have dealt fully, as a layman, we will say, with the various factors and characteristics that attach to ocean shipping?

A. Yes, sir.

Q. Have you anything to say as to the value of the contract, non-contract rate system, in addition to the benefits that you say result to shippers, exporters and importers, in relation to the stability that it produces as between the competing carriers who are members of conferences? We have dealt with it so far as with relation to shippers. Now, what is the general effect of it according to your observation as between the carriers who operate together in conference?

A. What I know from what steamship companies have told me, they feel it gives them a better amount of stability, and eliminates from their consideration, to some extent

which is useful, the bargaining that would go back and forth between large lots and small lots. I might also add a further consideration is that it has placed a premium upon service. In the steamship companies competing with us, where they all charge the same rates, they know those are going to get the business that cooperate intelligently in the many other intangibles that constitute service, as well as their handling of the goods physically, in catering to various exporters and importers for the business we give them. I have felt that it has been salutary from their point of view. [fol. 1292] It has given them the protection of uniform freight rates, prevented too cut-throat competition, as a result of which they would be able to give us shippers what we want in the way of regular scheduled sailings, good vessels, proper terminal facilities, and proper handling of the cargo.

Q. In other words, by virtue of this contract rate system which enables the competing carriers to know that they are each charging and receiving the same freight rates, they are at peace with each other in a measure, notwithstanding that they are competing with each other constantly for different lots of cargo, is that a correct statement?

A. That is a correct statement. And I have found the competition when there are a few or more members of the conference has been quite active and healthy, and I have enjoyed it.

Q. As to which lines to get the business?

A. As to which lines to get the business.

Q. Have you observed at any time any diminution of that competition as between carriers for the business offered simply because of the contract rate system?

A. No, sir. Our company is visited very regularly by freight solicitors on behalf of the different steamship companies that comprise the conferences with which we do business, and we divide our business up according to the service we get from them, selecting those steamship companies that [fol. 1293] we think will do the best job for us.

Q. Do you find there is a difference sometimes between the steamship companies in the conference?

A. A vast difference.

Q. A very considerable difference, I take it, in the number of sailings that the particular lines may have?

A. Yes, sir. But incidentally, that has given us the opportunity—I don't know that all companies do it—but it has given us the opportunity of giving some small steamship companies that do not have too frequent sailings a share of our business, because the service they give is good, and we are able to divide it up among all the members of the conference. To that extent, I think the conference system has at times helped some of the smaller lines that have less frequent sailings compared with some of the larger lines.

Q. Well, if that observation of yours is correct, then you would be ready to say, would you not, that the conference system benefits the small carriers through this contract rate system, as well as the small shipper versus the large shipper?

A. That would be my observation.

[fol. 1294] In the course of your Chairmanship of this Council and its Associates, I take that you come in very frequent contact with large bodies of shippers?

A. Yes.

Q. Exporters and importers?

A. Yes. More importers than exporters, but to some extent exporters as well.

Q. Have you formed any impression of the general views of shippers of that description as to their favoring or not favoring the contract rate system?

A. I don't think my contacts with export groups have been sufficiently large to warrant any conclusion. I think that I can proper- conclude from our contact with importer groups that in the main they favor the Steamship Conference system. Now, there are——

Q. How about the contract rate system under the Conference?

A. I don't think that has been discussed to a very great extent by a good many groups. I think they have accepted it largely.

Q. Accepted it as a natural concomitant of the Conference system?

A. I would think so. As I said before, I think there are certain phases of the Confer[illegible] system which various groups would like to see changed from time to time—nothing to do with the Conference rate system, but in the

[fol. 1295] main, I think it is generally accepted as a natural concomitant by importers with whom I have talked.

Q. You have no doubt, whatever, have you, that the Conference system is a great benefit to the commerce of the country?

A. No. I think it is.

Mr. Hupper: Your witness.

Cross-examination.

By Mr. McGovern:

Q. Mr. Rosenthal, I want to show you a copy of the shippers', or so-called merchants' contract that is in issue in this case.

Examiner Robinson: Do you want to identify it?

Mr. McGovern: Yes. This is Exhibit No. 14 for identification.

By Mr. McGovern:

Q. Did your firm sign a copy of that contract when you were solicited back in October of last year?

A. I believe that we did. Now, I no longer handle the details of these contracts.

Q. I understood you to say—I am just asking——

A. I said I was certain my firm had signed the Inward Conference from these ports, and that I was under the impression that we had signed this. If you wish, I will be glad to check that for the record.

[fol. 1296] Q. Well, do you know, as a matter of fact, whether your firm is presently shipping bound on this contract?

A. I believe so. I would have to check that.

Q. You know, do you——

A. I know that in past years—let me put it this way: I know from time to time we have signed a contract of this Conference eastbound. Of that I am reasonably certain.

Q. Well, you know, do you not, that the United States District Court has presently enjoined the operation of this particular contract eastbound?

A. Yes, I heard that.

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Q. So, if you are shipping on the Conference Lines today, you are doing so on your own volition, and not as a result of this contract?

A. So I understand, and I heard some discussion in the company as to whether or not they should take advantage of that injunction. But I do not know what has been done.

Q. Do you know, as a matter of fact, whether your company in this trade has ever shipped via an independent, non-Conference Line?

A. Up until the time of the injunction, I would say no. Since then, I believe no, but being under oath, I wouldn't want to state without verifying our records.

Q. In other words, the introduction to this particular trade of the contract, non-contract system hasn't made the [fol. 1297] slightest difference to your company?

A. No.

Q. You have confined your shipments to Conference Lines prior to the issuance of the Conference contract and subsequently?

A. As far as I know, but, as I say, I heard some discussion about shipping on other than non-Conference Lines.

Mr. O'Connor: Since the injunction?

The Witness: Since the injunction. But I don't know what has been done.

Mr. Hupper: Pardon me. He said "other than a non-Conference Line."

The Witness: I mean other than a Conference Line.

By Mr. McGovern:

Q. I think your testimony was clear. You indicated that under this Conference contract, if it were legally in effect today, that you would recognize a clear obligation to confine your shipments to Conference carriers.

A. Yes, sir.

[fol. 1298] Q. And you also indicated the very honorable position, that in your judgment, you should live up to a contract having signed one?

A. Yes, sir.

Q. Do you recognize a reciprocal obligation on the part of the carriers that live up to their obligation?

A. Yes, sir.

Q. Would you address your attention to that contract and point out to me what are the obligations that the carriers owe to you under the contract?

Mr. Hupper: I object to that question. He is not a lawyer. The contract speaks for itself.

Mr. McGovern: I am not asking him to testify as a lawyer. He has testified he recognizes under the contract an obligation to confine his shipments to conference lines. I am asking what obligations the carriers are under to him as a shipper.

Examiner Robinson: If he knows he may answer.

A. If you don't mind, I will have to read this (referring to Exhibit 14 for identification).

By Mr. McGovern:

Q. Surely.

A. Speaking as a layman?

Q. Yes.

A. I believe there is an indication in the contract that [fol. 1299] the members of the conference are going to have regular scheduled sailings.

Q. Let me stop you there, Mr. Rosenthal, and ask you, in the first place, do you see on the face of this contract any acceptance of a responsibility by the carriers to carry a single ton of your cargo?

A. "The carriers agree, subject to provisions hereof, to transport said shipments on their vessels sailing to the aforesaid countries."

I realize that doesn't obligate any of the carriers to put a specific number of sailings on.

Clause 3: "If the carriers fail to name space within three business days," and so forth, I can obtain space elsewhere.

Q. Assuming, of course——

A. I realize if the carriers withdraw all of their sailings, if the members of the conference withdraw all of their sailings, there is nothing I can do to sue them for damages in so far as this contract is concerned.

Q. I really wanted to elicit that one point. You realize under the terms of the conference agreement No. 4490, and under the terms of this contract, there is no assurance that

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the day after you signed this contract the conference will ever give you additional sailings of any kind. That is clear, is it not?

A. Yes.

[fol. 1300] Q. And you say there is a provision here that in the event they don't, you could secure space somewhere else. You think that affords you relief, do you?

A. Well, the only time I had occasion to test that was either in 1940 or 1941, in the Calcutta-New York trade, where the members of the two trade associations handling burlap, took advantage of that situation, and obtained outside sailings. I can't recall any other case where I have had occasion to invoke it.

Q. Do you think that that is a desirable safety valve in the interest of the shipper under this contract?

A. If I were able to write this contract I would like a little more notice. I would like to be able to have a little more notice than the provision given herein, yes, sir.

Q. You appreciate, do you not, that the provision allowing you to secure space elsewhere is meaningful for a shipper only in the event there is an independent in the trade?

A. Yes, sir.

Q. So, in your judgment, then, would it be desirable for the conference to employ the contract-non-contract rate system to exclude all indep*d*ndent shipping?

A. That is a very difficult question for me to answer.

Q. I think it is.

A. Because I find it difficult, in giving this matter a good deal of thought, and I can appreciate your position and that of your client, I think I have some understand-[fol. 1301] ing of it, but I have tried in analyzing this subject, I have tried to weigh the advantages and disadvantages of the system and this contract, to try to arrive at a conclusion as to what is best balance with the exporter and importer, and may I say it doesn't in some states in which our company has a very small volume of cargo—it would be very important to us as small shippers. In other trades where we happen to be one of the leading shippers I know that I could drive for certain bargains on rates and put some of the small companies out of business.

Now, I have therefore tried to approach it from the point of view of what I think is good, and what I think is not satisfactory in the situation, in trying to arrive at my net conclusion which I stated on direct examination.

Q. Do you suggest then that in your judgment one of the virtues that inheres in a contract system is that it tends to eliminate discrimination in rates between large and small shippers?

A. Yes, sir, and I wouldn't even, if I may say so, use the word "discrimination," in the sense it is used in legislation, or as it is used so frequently. I don't think it is that. I think it would be perfectly proper if you had high, wide and handsome transportation for the steamship companies to make different rates of different quantities of merchandise, just as a merchant, I am in the position of making lower prices on a single large quantity that [fol. 1302] I make out to a buyer as compared to a small buyer. I don't take that as discrimination. On the other hand, I think from the point of view of small business, as we like to call it, but a great deal of which exists in foreign trade, where the middleman does perform certain functions, certain economic functions that are not as important in domestic trade as they still are in foreign trade, that if there were different freight rates to different shippers, those small houses would be driven out. Now, we have had the tendency over the last 25 years or more in American commerce and trade, to eliminate both the small manufacturers as well as the middleman, and I believe that stable transportation rates are necessary to protect small men. Now, in foreign trade you have still a great number of middlemen, small exporters and importers, who, if they were not protected by stable, uniform freight rates, would be, in my judgment, driven out of business. That is why I think that is a fundamental point in this situation. [fol. 1303] Q. Yes, and yet you pointed out in your direct testimony that you recognize that in the domestic transportation field, for example, there is a recognition in rates between carload and less than carload quantities.

A. Yes, and if——

Q. You don't regard that as unfair?

A. No, I don't regard that as unfair, because, after all,

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your carload minimum on most products is a rather small quantity. It runs from 20,000 pounds on very bulky goods up to 50,000 or 60,000 pounds on more compact goods. So I don't think, having such small carload minimum quantities—and then with your trucking increase you have still smaller quantities of truckloads, and I don't think that is harmful.

Q. Why is a similar small allowance made on the same scale harmful in the ocean trade?

A. I don't know that they would necessarily be harmful if Steamship Conferences were to establish certain minimums. They have their minimum bill of lading. But let us say the quantities involved in that were increased slightly. I am not sure that would be harmful to small exporters and importers in all trades. In others, it would. It would depend to some extent, because in your raw material trades, for example, your margin of profit, as I stated before, is from one to three per cent, where actually the importer—I know more about that that I do [fol. 1304] about exporting—acts not as a broker, in that he does take the risk of contract as principal, but he acts to perform the services in foreign trade that a great many manufacturers in the United States don't wish to undertake for themselves. They don't know anything of ocean transportation. They have a domestic traffic department. They know nothing of marine insurance, because the legal liabilities of the domestic trade are different from those in ocean trade. They know nothing of Customs regulations, which, as you know, are somewhat complicated and at times unpleasant, and so forth.

So you do have that condition existing, and I think I would have to make a study of different commodities to say whether you could establish certain minimums or not.

Q. What you are asserting, then, is that gross differentials in the ocean trade, depending on volume, would be, in your judgment, harmful to the small trader against the big trader?

A. In many trades, yes.

Q. You recognize the Shipping Act of 1916 makes it unlawful to grant unfair prices based on volume?

A. Yes, sir. But I have also come to the conclusion

that it is frequently difficult to assert what is an unfair rate, or what is discrimination. We have that under the Patman Act as merchants all the time. That is something I don't know how it would be decided, except either by the Maritime Commission issuing a regulation, or if it [fol. 1305] went to the Court, and if it was arbitrated under the arbitration clauses that are now included in some Conference contracts.

Q. I am trying to ascertain, Mr. Rosenthal, whether in your judgment, both as an exporter and importer, and as a manufacturer, there is something peculiar about ocean carriage which renders the application of the laws of competition improper, in your judgment, and if there is something peculiar, what is that particular peculiarity?

A. Well, I don't think—I don't think that it is more peculiar to ocean transportation than I do to rail or truck transportation.

I believe that in what I call the service agencies there should be uniformity in costs. I believe Marine Insurance rates should also be uniform, as they are in a great many of the raw materials trades.

Q. Competition itself tends to make rates and services uniform, does it not?

A. After periods of cut-throat competition.

Q. If you cut the rates on one of your competitors at Stein, Hall, they are going to be compelled to meet that rate?

A. Yes, surely.

Q. Again, in the domestic field, it is true, is it not, that while roads and truck lines do have the rate Conferences [fol. 1306] similar to the shipping lines, that in the domestic field that shipper always has this assurance, that the rates fixed by those groups operating together may not exceed a certain reasonable maximum because the Interstate Commerce Commission stands there to fix the maximum in the event it is necessary?

A. Yes, sir.

Q. Now, that is not true in the field of ocean trade, is it?

A. No, sir.

Q. And if this Contract System were to succeed in eliminating from the North Atlantic Continental traffic

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Isbrandtsen and other independents, what assurance would you as a shipper have that the Conference would not fix these rates at an unreasonably high level?

Mr. Galland: Just a minute. I object to the interrogation of this witness as to a legal conclusion, as to what powers exist in Government to show unreasonable rates in ocean traffic.

Mr. McGovern: This witness testifies that for 20 years he has been teaching courses in Columbia University. I think he is very well versed——

Mr. Galland: I don't think he described himself as a lawyer.

Mr. McGovern: Nevertheless, he was allowed to testify. [fol. 1307] Examiner Robinson: I am inclined to let him answer if he knows.

A. I don't know what the law would specifically provide, because, although I have read the Act of 1916, and the Act of 1936, and the Act of 1851 before it, I wouldn't want to make a legal conclusion as to what the powers of the Maritime Commission are.

If I may speak as a layman, I have expressed myself on other occasions that I would wish that the Maritime Commission in several fields might have larger powers of regulation in some of these situations, if they do not now have them. Let me put it that way. Because I come back to the fact always that transportation is one of the services incident to the marketing of goods, and if I reduce my prices, as a manufacturer, I am predicating that on controllable costs of my own and my factory, to some extent, and perhaps I will be more skilfull or less skilfull than a competitor in that field. Just as I don't believe in competition in wages within an industry. I think there should be standards of wages. So I believe in these various services that are incident to our business of manufacturing and merchandising, there should be uniformity of costs of those services, and if we do not now have legal provisions of those, I would personally support them.

By Mr. McGovern:

[fol. 1308] Q. Now, assume for the moment, if we may assume, there is presently no legal recourse available with regard to whether or not a certain rate is unreasonably high, would it be your judgment that the existence of at least one independent in one of the trade routes is a good thing, as a possible yardstick to the shipper as to what is or is not a reasonable rate?

A. You put me, in a way, in a difficult position, because in part, if I were to answer that question in the negative, it would imply I don't believe in competition, or free enterprise, and that is not the case at all. It is no objection I have to independent carriers at all. In fact, I believe that independent carriers have, on occasion, been able to give certain shippers excellent service, and have given them a good advantage. It isn't that situation at all.

Just as, incidentally, I have known in one of the trades I have observed, although I am not in it, that occasionally one of the very large operators has chartered a vessel of his own. I think that is perfectly proper. I am not discussing proprieties.

Again I come back to the basic fact. I believe, by and large, there has to be a Steamship Conference system to assure uniform and stable freight rates.

I also believe if someone makes a contract with the Conference, he is obligated to fulfill the terms of that contract, [fol. 1309] and that if he breaches the contract, reasonable damages can properly be assessed against him.

Now, that does bring us to what reasonable damages are, and, as I say, I have not given that enough thought to make a specific recommendation. But I do come back to that fundamental, and I don't say that I don't believe in independent carriers. Of course I believe in independent carriers. But at the same time, I also believe in the Steamship Conference system, and I think one of the problems is the co-relation of the two.

Q. I daresay you are exactly right on that.

But what I am coming to is, as a shipper, you are not impervious to the level of rates being charged the shipping public?

A. Not in the least. And may I say in one Conference,

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for 20 years, once a year a committee of shippers has met with the members of the Conference, and we have negotiated the rate. The Conference has not always gotten everything they wanted in rates, and we haven't, either.

But I have found in many discussions that Conferences have been willing to explore our economic problems in regard to rates, and their effect on the movement of goods, and in other situations I have found perhaps that the Conferences have been indifferent to that. It has varied as human beings vary in that situation, and is not as perfect [fol. 1310] as I would want it.

Q. With some of the notions you have expressed, perhaps there is no argument around the table here. Unfortunately, we are dealing with the particular contract, and that is the one you have before you.

I indicated earlier, it was very honorable for you to indicate you have an obligation under the contract to confine your shipments to Conference Lines, and live up to that obligation.

I asked you earlier whether you saw any obligation on the part of the Conference Lines to carry cargo, and you said no. Is that right?

A. I said no, based on the fact that if they wished to withdraw all of their sailings, there is nothing under this contract that would compel them to put a sailing on berth.

There are some things we do accept as part of regular business operations, and in the Conferences we have accepted that over the years.

[fol. 1311] Q. For example, testimony this morning from the Chairman of the Conference reflects that since March 2, 1946, when the lines were turned back to private operation, six new lines have come into this trade, and three lines have been withdrawn. Now, under the terms of this contract, each new line coming into the trade automatically imposes upon you, does it not, an obligation to confine your shipments via one of those new lines in the event no other conference line is available?

A. Yes, if they join the conference.

Q. But if they withdraw from the conference, and thereby reduce your service as a shipper to the point where it

is unsatisfactory, what recourse under this contract do you have?

A. I have no particular recourse other than the power of cancelling the contract and appealing to the Maritime Commission which has to pass on the conference agreement.

Q. In short, this contract from your point of view is what is known as an open-end indenture, isn't it? All the obligation is on your shoulders, and precious few privileges in the document itself.

Mr. Hupper: I object to it as pure argument. He is not a lawyer, and there is a piece of paper.

Mr. McGovern: I withdraw it, Mr. Examiner.

By Mr. McGovern:

Q. Coming now to the question of rate protection, Mr. Rosenthal, on the face of this contract what rate protection [fol. 1312] do you receive?

A. The rates are stated on the reverse side.

Q. All right. For how long are those rates good? I direct your attention to the sixth paragraph below the phrase "as per reverse side or attached."

A. "The rates herein specified are subject to being increased reasonably from time to time. Any notice of increase shall be deemed accepted by the merchant unless within 20 days after his receipt of the notice of the increase he gives the carriers written notice of non-acceptance. In the event of such non-acceptance the carriers shall have the option at any time within 20 days after receipt of the merchant's notice to cancel this agreement on giving the merchant at least 60 days written notice, but if such notice is not given this agreement shall remain in effect."

Q. Now, you realize, I take it, in view of your familiarity with the contract system, that in the event they decide to increase the contract rates, as they euphemistically put it, reasonable, of course, the non-contract rate will go up by the fixed differential?

Mr. Hupper: That is argument. I object to it.

Mr. McGovern: I don't think there is any argument about that.

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Chairman Robinson: I suggest he can answer it by the terms of the tariff.

[fol. 1313] Mr. McGovern: I am suggesting that under the terms of this contract, the lines reserve the right to increase the rates of the contract. Now, the contract on its face gives the shipper the right to cancel, but I say he does so with the knowledge that the non-contract rates will be higher.

Examiner Robinson: That is to provide for the dual system.

Mr. McGovern: Yes.

By Mr. McGovern:

Q. In view of that system, what actual rate protection do you feel you have under the contract?

A. Not as much as I would like to have. I refer to contracts in pre-war years where they made contracts with a rate period of a year, which was cancellable only in a contingency, such as a war. And certainly the trade associations in which our company is active, are constantly pressing the conferences to restore longer term contracts. I certainly would like to see a longer term contract.

Q. You know, do you, sir, that on the record here Isbrandtsen has been accused of making contracts for a fixed term at a fixed rate up to a year?

Mr. Hupper: There is no accusation. It is a fact.

By Mr. McGovern:

Q. That is a fact of which you approve?

[fol 1314] Yes, sir. I think that is quite proper. Sure.

Q. But those contracts and the rate protection was given to the shipper, mind you, not by the conference, but by an independent.

[fol. 1315] A. I don't want to appear here opposing the independents, not by any manner of means. I recognize that, and I think there is much good in that. It again comes back, as I said before, to a problem I don't feel is within my field of competency, as to the co-relation of the two.

But I don't think we can do without a uniform rate structure given to us by the Steamship Conference system.

Q. Yet, on the one hand, while you say you do not oppose the system past, present, and in the future, of the independents, you testify in favor of the contract system that is intended to drive the independents from the trade, is it not?

Mr. Hupper: I object to that. You have put an implication in that that hasn't been asserted here at all.

Mr. McGovern: I am asking the witness a question.

Mr. Hupper: All right. You have no right to ask that question, saying something is tending to drive from the trade——

Mr. McGovern: I am asking his view of it.

Mr. Hupper: There is no such purpose.

Mr. McGovern: I will rephrase the question this way:

By Mr. McGovern:

Q. In your judgment, Mr. Rosenthal, would the effect of this contract system, if the Conference were left to its own devices in the North Atlantic trade, and allowed to [fol. 1316] apply the contract system straight across the board to all commodities moving, would the effect on the shippers be such that an independent American flag carrier would necessarily be denied access to American shippers?

Mr. Hupper: I object to that. He is not qualified to answer.

Examiner Robinson: Objection overruled.

A. I believe in the handling of what we commonly call miscellaneous commodities, it may have that effect. I believe, on the other hand, if I am correct, in pre-war years independents did operate in certain trades and certain commodities because the nature of the carriage enabled them to stay in the business. But I would concede it would make it much more difficult for the independents to stay in business.

By Mr. McGovern:

Q. You realize from the evidence in this record that in the prewar period the contract was only applied to a limited number of items moving in the trade?

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A. No, I haven't examined the record.
Q. You don't know that?
A. No, sir.

Mr. McGovern: That is all.

By Mr. Cockrum:

Q. Mr. Rosenthal, from what country or countries are [fol. 1317] your commodities imported primarily?
A. Primarily from India, Indonesia, Straits Settlements, Saigon, and different countries of Europe and Brazil. In Europe we buy in Holland, Italy, Cyprus, Portugal, Spain, Belgium, Czechoslovakia, the United Kingdom. I think some in France, and maybe one or two others.
Q. Would, in your opinion, a contract providing for double the amount of freight involved in case of a breach by a shipper be a reasonable provision, penalty provision?

Mr. Hupper: I object to that.
Examiner Robinson: Read the question.

(Pending question read by reporter.)

Examiner Robinson: He may answer. He is not only a professor, but a shipper. He ought to have some thought on it.

A. That is a question, I must admit, I have not given too much thought to. I saw something that came out recently, I believe, as a result of a hearing in San Francisco. I haven't examined the Examiner's report of the hearing, or the details. I don't know. I think that is a difficult problem. I have tried to give it some thought. I have come to no conclusions. I believe that some system has to be devised where, if someone breeches a contract, proper damages can be assessed against him. I must admit, with some reluctance, that I have not come to a conclusion as to [fol. 1318] what fair damages would be in a given situation.

By Mr. Cockrum:

Q. It has been testified on this record, Mr. Rosenthal, that certain shippers have come to the Isbrandtsen Company, presented their problems, shipping rate problems,

Isbrandtsen has discussed them with them, and as a result of those discussions Isbrandtsen has made them a rate below the existing Conference rate.

It has been established that those rates have been profitable to Isbrandtsen.

In your opinion, is the American——

Mr. Galland: I take exception to that statement. I object to that part of the statement. I don't think there has been any evidence on this record as to whether any particular rates have been profitable to Isbrandtsen or to anybody.

Examiner Robinson: For the purpose of this question, Mr. Crinkley certainly said several times he wouldn't make any rates unless they were profitable.

Mr. Cockrum: That is right.

By Mr. Cockrum:

Q. Assuming that premise, Mr. Rosenthal, in your opinion is the American shipper entitled to the savings represented in those lower rates by Mr. Isbrandtsen?

Mr. Hupper: There is no contention that he isn't.

[fol. 1319] Mr. O'Connor: Don't try to answer for him. He is a professor.

Mr. Hupper: I am objecting to the question.

Examiner Robinson: Wait a minute.

The Witness: May I establish for the record I am not a professor.

Examiner Robinson: Read the question.

(Pending question read by reporter.)

A. Yes, sir. I think all members of the trade would enjoy seeing the Conference reduce their rates to that level.

By Mr. Cockrum:

Q. Thank you.

Mr. Rosenthal, were you contacted at any time during the preparation of this particular contract which has been submitted as Exhibit No. 14 for identification?

A. No, sir.

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Mr. Cockrum: I think that is all, Mr. Examiner.

Examiner Robinson: Is there further cross examination?

Mr. Malatzky: I want to ask a couple of questions of Mr. Rosenthal.

By Mr. Malatzky:

Q. Mr. Rosenthal, were you connected with the National Council of American Importers on July 30, 1941?

A. You refer to the foreign trade definitions. I was one [fol. 1320] of the members of the committee that drafted them.

Q. I knew that. I wanted you to say so. You are familiar with the meaning of "f. a. s." an "f. o. b."?

A. I think so.

Q. Now, in this contract, I think in Clause 1, they say that in consideration of rates and other conditions, and so forth, the merchant agrees to offer all shipments of commodities mentioned, and in the following clause, Clause 2, it goes on to say, "This contract covers all export shipments of the merchant."

Now, in your opinion, would a shipment of an exporter who has sold f. a. s. or f. o. b. terms be his shipments if the consignee were to instruct him to use another carrier?

A. No, sir. In my judgment, under f. a. s. and f. o. b. vessel, they are not shipments by the exporter in the sense that the buyer is obligated to provide the ocean freight space, and the exporter has no choice of carrier or route.

Examiner Robinson: He does not have?

The Witness: He does not have.

By Mr. Malatzky:

Q. Would that apply even though the bill of lading shows that particular exporter as the shipper?

A. In my judgment, it would. In my judgment, the exporter is obligated to his Steamship Conference contract when he sells under any one of the terms used that include the cost of ocean transportation, and obligates the exporter [fol. 1321] to provide the ocean freight space.

Q. One more question: In some instances the shipper is permitted to select the carrier, or to select the route. He

receives no specific instructions from the consignee. Now, if in his judgment with relation to any such shipment, it would be to the interest of the consignee to use a non-Conference carrier, would you consider that as his shipment under those circumstances, to the point where he has to use the Conference, notwithstanding that in his own judgment it would be better for the consignee if he used an outside line?

A. I believe if the buyer leaves it to the seller to select the carrier, where that responsibility rests with the buyer and the seller has a contract with the Conference, that without knowing what the Board of Arbitration or a Court would decide, I think the seller would be obligated to use the Conference Line.

Q. Although, in his judgment, it would be contrary to the interests of the consignee?

A. As nearly as I can determine what an interpretation would be, I think so, Mr. Malatzky.

But I would also like to say that I think that that is an area of interpretation in which there could be some disagreement, and perfectly honest disagreement.

[fol. 1322] Mr. Malatzky: Thank you. That is what I wanted to know.

Examiner Robinson: Is there any further cross-examination?

By Mr. McDowell:

Q. Mr. Rosenthal, I take it your position is, then, I don't want to misstate it, that you believe in what you call free enterprise, that is, competition in normal commercial relationships, but not in shipping.

A. No, sir. That is not quite accurate, Mr. McDowell. I wouldn't take the position that there was no competition among railroads, because the rates are uniform among all railroads serving the same points.

I would take the same position in relation to ocean transportation. I believe in competition. I don't believe that there should be cut-throat competition, or—that might be a bad term to use. I don't believe there should be different ocean freight rates. I don't believe there should be competition in the costs of ocean transportation.

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But that does not mean I do not believe in competition.

Q. You don't believe an individual carrier should be free to charge a rate lower or different from the rate established by the Conference Line?

A. Yes, I do. I mean, that is not my position at all. That isn't my point. I don't believe, on the whole, that competition is good. But I know nothing in the law or [fol. 1323] practice to prevent a steamship company from making lower rates. But I don't think it is salutary to the small exporter and importer. That is correct.

Q. I want to make sure I understand your position.

I understood you to say that there shouldn't be rate competition or cost competition, and that, of course——

A. As a matter of principle, I do not believe in that.

Q. I see. Now, you ship, do you, in substantial quantities in the trades involved in this proceeding?

A. Under this contract, no. This is one of the smaller parts of our business. We ship in very large quantities from India, and from Indonesia. Our trade here is substantially less.

Q. I understood you to say in response to a question by Mr. Cockrum that you did ship from Europe.

A. Yes, we do, but you asked in substantial quantities. I am saying that is not as large a part of our business as our imports from some other parts of the world.

Q. Putting our attention for the moment solely to the trades covered by this Conference, or the Conferences involved in this proceeding, do you ship in quantities which require service at more frequent intervals than that provided by the independent lines?

A. I have no idea what the schedule of sailings of the [fol. 1324] independent lines are, so it would be difficult for me to answer.

I would say that if we had two sailings a month from this group of western European ports, it would be ample for our needs.

Q. Do you, in some of the trades in which you ship in larger volume, require more frequent sailings than two a month?

A. Require wouldn't be quite an answer. It is more advantageous to us. If we had bi-weekly or monthly sail-

ings, we could probably get by all right, but our costs of storage and investment in goods at any one time would be greater than if, for example, shipping out of Calcutta, we are able to divide the goods among more vessels, sailing at different times, or the same from Indonesia. So I would say in most of our trades we could, if necessary, confine ourselves even to monthly sailings, and some we would want bi-weekly sailings as a matter of convenience to us in handling the goods, because if we got too large quantities in on any shipping vessel and have to remove within the free time allowed, extra storage will accrue, because we can't make immediate delivery to the factory or to the customers. So more evenly spaced sailings are advantageous, but not a requirement.

[fol. 1325] Q. I don't want to get into theoretical or hypothetical considerations, of course, but I take it from your testimony that you have had rather broad experience with importers, or shippers' experiences generally in this connection, and I am interested in the question as to whether or not there are shippers who do require more frequent service, or who need the advantages offered by more frequent service than the independent lines might be able to provide.

A. I would say that it would be a convenience to some importers and to some manufacturers who use import raw materials, but not an essential.

Q. As to that, then, looking solely at those shippers to whom it would be a convenience, and also with respect to your own situation to the extent that you would incur additional costs, or otherwise find it more convenient to have more frequent sailings than the independent lines might provide, is it your understanding that if you did not agree where this Conference contract, Exhibit No. 14 for identification is in effect, to, in accordance with the terms of that contract, confine your shipments to the Conference Lines, would you then have to pay a higher non-contract rate on such shipments as you might make by Conference lines?

A. Yes.

Q. So that, in order to get the benefit of the additional [fol. 1326] sailings which the Conference offers, you are

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really in a position, are you not, as a shipper, to give them all or none of your business?

A. Yes, sir.

Q. Do you find that in your own experience, or would you say, if you can, whether or not you regard that as putting an economic inducement on the shipper to agree to confine his patronage to Conference Lines?

A. To the extent that the Conference gives regular schedule of sailings, and maintains them, yes.

Now, if, for example, independent lines, one or more, were to have sailings with sufficient frequency from any group of ports we needed, I would feel free at esent to use the independent lines.

As I said before, I think our company was i estigated since the injunction. Perhaps we could have looked into it even sooner as to what our needs were.

Q. May I interrupt? I don't mean to change your thought, but you are speaking, as I understand, with reference to a situation where the Conference contract is not applied, and you are not bound.

A. No. I would even say this, Mr. McDowell, that while in principle, as you know, I approve of uniform costs of transportation, in the competitive situation of the world today, with independent carriers and some trades carrying [fol. 1327] goods at lower rates, I would feel quite free, and would feel it appropriate for me not to sign a Conference contract, and to use the independent carriers if they were able to satisfy me as to their frequency and regularity of sailings, and I wouldn't take it at all amiss.

Q. Of course, if they weren't able to satisfy you, then to the extent you used them you would have to pay the higher rate?

A. Correct. And if they couldn't satisfy me, after all, it probably would be an economic necessity for me to accept the Conference contract, and to pay the Conference rate on all of my shipments, even if they were higher than the non-conference rate.

Q. Now, is it your understanding that under the dual rate system maintained by the Conference in connection with the contract rate, that the sole distinction there with respect to, and as a basis for, the applicability of the higher

rate, is whether or not you have agreed as a shipper to confine your patronage to Conference Lines exclusively?

A. Yes. As I understand it, if I do not sign a contract in which I agree to confine my business to Conference Lines, if I then ship over a Conference Line, I pay the non-contract rate.

Q. The reason for that being no other than the fact that you have not agreed to confine your patronage to the [fol. 1328] Conference vessels?

A. Yes.

Mr. McDowell: That is all.

By Mr. Galland:

Q. Mr. Rosenthal, Mr. McGovern invited your attention to the provisions of this contract form, with reference to the question of its provisions for assured frequency of service, or the lack of such provision.

Has it been your experience that in the trades under discussion here you have, in fact, obtained sufficient frequency of service through your dealings with the Conference carriers?

A. Over the years, with the exception of war conditions, yes, sir.

Q. Mr. McGovern also questioned you with respect to remedies that might be available or not available in excessive rates under the Shipping Act of 1916.

Are you familiar with the provisions of that Act which provide for disapproval of Conference agreements under circumstances where they operate to the detriment of the commerce of the United States?

A. Yes, sir. It has been my understanding, if I may give it as I see it, that if the Maritime Commission concludes that a Conference agreement is necessary to public policy and will harm the commerce of the United States, and therefore disapproves the Conference agreement, that [fol. 1329] the Steamship Conference may not operate as a Conference.

Q. And will you, as a shipper, incline toward the position that where a Conference established its rate at a level that you considered unreasonably high, that rate level might be detrimental to the commerce of the United States?

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A. Yes, sir. I would. And I would unhesitatingly take the matter up with the Commission, and I would hope the Commission would take action.

Mr. Galland: Thank you. That is all.

[fol. 1330] Examiner Robinson: Is there any further cross-examination?

Mr. O'Connor: I have nothing at the moment.

Redirect examination

By Mr. Hupper:

Q. Mr. Rosenthal, speaking of the trade conference by this Docket 684, which is the North Atlantic Continental and vice versa, has your company ever failed to have space furnished you for any shipments either way that you wanted to convey?

A. As far as I can recall, in the years I have been in business, we have had difficulty only during a period such as 1939, after the outbreak of the war. Prior to that time we have always had ample sailings.

Q. As you say, in periods when commercial operations have not been interfered with by any war conditions, you have always had all the space you needed under these contracts?

A. Yes, sir.

Q. Is the level of ocean rates between North Atlantic and European ports affected in any way from time to time by competitive rate levels as between other countries, do you know?

A. I don't know.

Q. Do you ship out of any other country than the United States?

A. How do you mean?

[fol. 1331] Q. I will withdraw that question and put it in a different form. Is any part of the activities of your company carried on in countries other than the United States with respect to either import or export of goods?

A. Before the war we were fairly substantial shippers from Indonesia to different ports in Europe.

Q. Taking that as an example only, I want to put to you a question whether the rates of freight between Indo-

nesia and Europe might have a bearing on what the rates might probably commercially be as between Great Britain and Indonesia, or vice versa, as concerns freight to this country?

A. I have only noticed a relationship on very rare occasions, when there have been rate wars from points in the Far East to European ports, and opportunities have arisen to ship goods to Europe, and then trans-ship them to the United States at lower rates than contract rates. Now, I believe there was some threat of that recently in a freight war from Calcutta to certain European ports. But that has happened so rarely that I don't think it can be said to have any effect on American commerce.

Q. Take another example. Have there not been instances when goods moved out of Great Britain, we will say, to the Argentine, and the level of rates in that trade would have an effect on the level of rates out of United States ports to the Argentine?

A. I have had no direct experience with that. I have heard of cases where on export trade from the United [fol. 1332] States there has been a relationship on the movement of goods where the United States manufacturer has had to compete with other manufacturers. But I don't know of any examples first-hand on that.

Q. You can put it briefly this way, can't you, that the competition of goods as between other countries produces competition in rates?

A. Definitely.

Mr. Hupper: That is all.

Recross-examination

By Mr. O'Connor:

Q. Professor, I understand you to say in answer to the question by Mr. McDowell, that as to this European trade, and I think you said generally as to other trades, that as to the frequency of sailings, that sailings twice a month or possibly once a month would suit your necessities?

A. I think it would prove the needs. I think we would be able to do with monthly sailings. I am certain my own

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company would be able to do with bi-weekly sailings on the commodities we import from the ports.

Q. Now, do you recall what companies transported your goods in 1947? Let me ask you this. Did you ship any with this Canadian line to Europe?

A. Not that I recall. What is the name of it?

[fol. 1333] Q. Canadian Continental.

A. Not that I recall. I don't handle all the details of the shipments, so I wouldn't be positive on which line we used. I am certain we used the Holland-American Line.

Q. Did you use the Belgian Line?

A. I am not sure.

Q. Did you use the Cunard?

A. Yes, sir.

Q. Did you use Ellerman's?

A. From the Far East, yes. As to Europe, I don't know.

Q. Did you use the French Line?

A. I don't know.

Q. Did you use the Maersk Line?

A. I don't know.

Q. Now, are you aware of the fact that in 1947 the Isbrandtsen Company had 23 sailings on this berth from the North Atlantic to Antwerp, Belgium?

A. No, sir. I have never seen a solicitor from the Isbrandtsen Line for as many years, and I don't know whether they have called upon those in our company who now book the freight or not.

Q. Are you aware that they had 36 sailings in this trade in 1948?

A. No, sir.

Q. Did you ever ship anything during those years on the [fol. 1334] Isbrandtsen Line to Europe?

A. Not that I know of.

Mr. O'Connor: That is all.

The Witness: May I just add one thing. I don't wish my appearance here to be construed as any disapproval of what the Isbrandtsen Line is doing.

Examiner Robinson: No, I didn't take it that way.

Are there any further questions?

Mr. McDowell: I would like to ask another question, if I may?

Recross-examination

By Mr. McDowell:

Q. I am interested in your position, Mr. Rosenthal, with respect to this question of rate competition. I understand now, and again I trust you will correct me if I am mistating your position, that what we arrived at was that you didn't feel that an independent line should be free to quote a rate below or different from the rate of the conference because that would lead to rate instability?

A. Yes, sir.

Q. I take it then that you are favoring the contract rate system because of the fact that you regard it as contributing to a stabilization of rates by limiting the ability of the independent lines to bring about rate instability?

A. Yes, sir. But not only the independent lines, but by creating a situation where throughout an entire trade [fol. 1335] there would be instability of freight rates.

Q. Of course, in so far as stability of rates among the conference lines as a group is concerned, that is effectuated by their agreement?

A. Yes, but I also feel if there were no conference, that would equally be conducive to a lack of stability in the freight rates.

Q. If there were no conference?

A. Yes, sir.

Q. Well, you don't regard the contract rate system as being separatable from the conference system as such?

A. Well, up to date I haven't seen any way of making it separate.

Q. Have you had experience with conferences in which a no-contract rate system was in use?

A. I wouldn't want to pretend to a knowledge of the details of all of the conference contracts over which I have shipped over the years. I have a vague impression there was a conference, and it is only a vague impression, where the contract did not provide for a non-contract rate, and on that particular service there were only contract vessel, and perhaps the service in itself was not such as to attract independent carriers. I wouldn't know that offhand. And we just worked it out in that way. In return for the con-

[fol. 1336] ference lines supplying an adequate number of vessels, all of us gave them our freight. There was one freight war in that service in 1928, if I recall, as a result of which a new steamship company joined the conference. That was the Calcutta-North Atlantic Conference. The Roosevelt Steamship Company entered into it, which I believe was in 1928.

Mr. McDowell: That is all.

Mr. McGovern: I have a few questions.

Recross-examination

By Mr. McGovern:

Q. Were you aware, Mr. Rosenthal, when this contract was tendered your company in October of last year, that there was no proposed reduction in the contract rates that were tendered to you over the existing non-contract rate?

A. I didn't examine the rates of the contract. I don't find them any more myself.

Q. I think the record reflects actually the present existing rates were to be the contract rates, and the non-contract rates after November 1st were to be substantially higher—I think the testimony was 20 to 30 percent higher. So that, in signing the contract, neither you nor other shippers got reduced rates over the present existing rates for signing the contract?

A. No.

[fol. 1337] Q. Were you aware of the fact that the automobile manufacturers association declined to sign the contract, and they were extended until December 31, 1948 by the conference to give further consideration to that matter?

Mr. Hupper: I object to that question. There is no evidence about the automobile people.

Mr. McGovern: I am reading from the October, 1938 minutes of the North Atlantic Continental Freight Conference.

Mr. Hupper: It is not in evidence.

Mr. McGovern: I am asking the witness if he was aware of that?

A. No, sir.

By Mr. McGovern:

Q. You weren't aware?

A. No.

Q. If in fact the conference had granted such an extension of time to a large group of large shippers, such as the automobile manufacturers, would regard that as discriminatory against the little fellow compelled to sign November 1st to get lower rates?

Mr. Hupper: I object to the question.

Mr. McGovern: I am asking the witness his view.

Mr. Hupper: His view has nothing whatsoever to do with this.

Examiner Robinson: He may give his view on it.

[fol. 1338] A. In my judgment it should be extended to all shippers of all commodities.

By Mr. McGovern:

Q. One additional question. You indicated, I think, in your direct testimony, you thought that sound transportation economics required that the same rate apply on all carriers regardless of the service provided?

A. No, that is not quite correct, because I would want to know there exactly what we would be in agreement on as to service.

Q. Well, it is a fact, is it not, that all of the carriers in the conference charge you and any other shipper the same rate?

A. Yes.

Q. But you admitted yourself the service tendered the shippers by various members of the conference varied substantially?

A. But in the same way that service is given to us by railroads or trucking companies. It is the way in which a steamship company handles the cargo. It is the way in which a steamship company handles claims made against it. It is the intangibles of service and salesmanship that I had in mind.

Q. You weren't talking about service in the sense of a slower boat that would take several days longer to make a given trip?

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[fol. 1339] A. No, I didn't have that in mind. Actually, in practice, that has not arisen in my experience for a good many years. Most of the vessels are about the same rate as previous. Now where the members of the conference differ in the speed of their vessels, usually we will give our business to the members of the conference that has the faster vessels. Occasionally, very occasionally, it might suit us to ship the goods on the slower vessels, to spread our inventory out more. But with the improvements—I think that was very important in the early 1920's but during the 1930's most of the lines with which I had experience had approximately the same speed of vessels, and approximately the same marine insurance rates applied to them, and that is only within my field of experience.

Q. But as a shipper at equal rates, you would, of course, prefer to ship by the line giving the better service?

A. Yes.

Mr. McGovern: That is all.

Mr. Cockrum: The answers Mr. Rosenthal gave to Mr. McDowell leave me considerably confused now.

Examiner Robinson: Let's have a recess.

(A short recess was taken.)

[fol. 1340] Examiner Robinson: Let us proceed. All right, Mr. Cockrum, he is yours:

By Mr. Cockrum:

Q. Mr. Rosenthal, a while ago I asked you the question if the American shipper is not entitled to savings represented by rates made by the Isbrandtsen Company under the conference rates, but rates at which the Isbrandtsen Company might make a profit——

Mr. Cockrum: Will the reporter read what I have said so far?

(The pending question was read by the reporter.)

By Mr. Cockrum:

Q. (Continuing) To that question I believe you answered yes, and expressed your opinion to the effect that you thought the conference should meet the rates?

A. I said I hoped the conference would reduce its rate, too. I think we have to distinguish there, if I may, between what I may have tried to establish as my basic principle in the situation and what the current situation actually is. As long as it is quite proper where a steamship company is not to be a member of a conference and to make any rate that it chooses, I think any shipper, including our company, is entitled to take advantage of it. On the other hand, in my dealings or the subject as a whole, I still believe in uniform cost of transportation, and I do not believe in different freight rates, for the reasons that [fol. 1341] I explained too, I think, to Mr. McDowell before.

Q. If I might follow my question one step further, it is your opinion likewise that the American shipper is entitled to those lower rates in making—in disposing of the products on the foreign markets?

A. Yes.

Mr. Cockrum: I believe that is all.

Examiner Robinson: Are there any further questions?

(No response.)

Examiner Robinson: Witness excused. Thank you very much.

(Witness excused.)

Arnold K. Henry was sworn and testified as follows:

Direct examination

By Mr. Hupper:

Q. Mr. Henry, will you kindly give your full name and address?

A. Arnold K. Henry, 611 Yale Road, Cynwyd, Pennsylvania.

Q. Are you connected with the University of Pennsylvania?

A. Yes, sir.

Q. In any way in relation to the subject matter of transportation?

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A. Yes, I have taught transportation in the Wharton [fol. 1342] School of the university for 27 or 28 years.

Q. Are you teaching that subject presently?

A. I am. I have one undergraduate class and one graduate class.

Q. One class of each each week, I take it?

A. Yes, two hours each.

Q. In that course of transportation, what principal subject do you cover?

A. Well, we attempt to give something of history and organization and operation in a general sense plus a smattering of regulation and government control and discussions of conferences, stowage, and traffic solicitation, and documents used, commonly used in commerce shipping, et cetera.

Q. It is ocean shipping you confine your teaching to nowadays, is it not?

A. Practically. We discuss some inland shipping, lakes and rivers.

Q. Years back, did you have considerable to do also with the teaching of fundamentals of inland transportation, rail and whatnot?

A. Yes.

Q. But now you are focusing principally on ocean transportation?

A. Yes, for the last several years, five or six years.

Q. Have you become familiar with that subject as a [fol. 1343] result of your teaching and the preparation therefor?

A. Well, I believe I am, at least.

Q. In the course of your teaching, do you deal with the matter of conference agreements, bills of lading, rate contracts, and that general range of subjects?

A. Yes, we spend some time on conference agreements, and use typical agreements which the Commission is good enough to send to me from time to time.

Q. Do you secure them from the Maritime Commission?

A. Yes, sir—as examples, in order to establish a pattern rather than specific content of a particular agreement.

Q. I suppose you have quite a considerable number of students in your classes?

A. Well, my share of the transportation students is small. It will vary with the four hours from 40 to 60.

Q. Well, there are a considerable number of young men who are interested in the subject?

A. Yes, sir.

Q. Can you give us a general descriptive idea out of your experience and understanding as to the general fundamental characteristics of ocean shipping?

Mr. McGovern: I object to that question, Mr. Examiner, in so far as it assumes the witness has had any experience with ocean shipping.

Mr. Hupper: He is a professor of transportation.

[fol. 1344] Mr. McGovern: I understand he is a professor, but I didn't understand him to say he didn't have anything to do with ocean shipping. Professing and practicing are two different things.

Examiner Robinson: Go ahead and see if you can make anything out of it.

The Witness: Well, I would assume, I may be perhaps far from the mark, I presume, sir, what you request is a statement concerning the fact that ocean transport has been forever highly competitive because of its international character, and possibly going one step further, I believe it is generally concluded to day that if the family of nations are going to enjoy the benefits one may have in the way of raw materials, manufacture, and so forth, I think I would have to stop there—I don't know what else you might want.

By Mr. O'Connor:

Q. Quite right. It shows he understands the question.

Mr. McGovern: I understand the question, too.

Mr. Hupper: Some people don't want to understand it.

Mr. O'Connor: I didn't.

By Mr. Hupper:

Q. Well, I gather from what you said now that it is important that goods move over the ocean freely?

A. Yes, sir.

[fol. 1345] Q. It is also important and desirable that there

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be a fair stability in the ocean freight rates under which goods move?

A. I should think it is most essential from what I know of the subject. At times at which there was instability, I have been generally admitted that the *towns* were disadvantageous to shipping and international commerce as well, of course, specifically our own.

Q. Well, by that do you mean in *towns* of wide-open competition in freight rates have produced unfavorable results in the commerce of the United States?

A. I believe that is true, and I believe there is ample evidence for the conclusion that the exporters themselves place high value upon stability for a number of reasons, particularly the reason that forwarding seems to be almost impossible in the absence of some stability.

Q. You came here at my request today to be a witness, did you?

A. Yes, sir.

Q. You heard the testimony of Mr. Rosenthal this afternoon?

A. Yes, sir.

Q. Do you agree in substance with what he said?

A. Yes—I am not competent to agree or disagree with some of the detailed answers, but I think in general I agree with the opinions he expressed with regard to conferences.

Q. You heard his testimony about contract rates, I take it?

[fol. 1346] A. Yes, sir.

Q. Do you agree with that, so far as you understand it?

A. Yes—I would qualify it, or should I say expound it, in this sense, that not testifying as one actually in the steamship business or the field of foreign trade, it seems to me it is most essential that we prefer stability, and if I may run the risk of mentioning the Alexander Report once, perhaps——

Q. You might do that. Some of our people need to be educated.

A. I must confess to having read it, and in that, as I recall it, they studied 80 conference agreements, and the great majority, if not all of those agreements, arose from the fact that rate wars had existed, and I know of no

alternative that has been suggested by anyone to the conference in the way of stabilizing steamship rates.

Q. Will you give us any further observation that you care to do on the subject?

A. Well, the often-repeated advantages, in addition to stabilization, of course, are frequency and dependability of sailings, and from the point of view of the ship operator there, is, by the very nature of stabilization some protection given to his capital investment. The shipper, of course, and his receiver is always at the end of the line, and if that is not attractive, not an attractive investment, [fol. 1347] then ultimately, of course, the service is going to suffer, as I would see it, and the shipper and the receiver would likewise suffer from impairment.

Q. In other words, it is your view that stability of rates produces a better quality of service and enables the maintenance of other instruments of service by way of ships and other features that attend shipping, is that right?

A. I believe that is true, yes. I can't conceive of adequate service resulting from uncontrolled competition and from what knowledge I have of the Shipping Act of 1916, it seems to me that there is overall adequate protection in the way of authority that the Commission has to correct abuses.

Q. What is your understanding as to the effect of wide open competition in the varying levels of rates of shipping?

A. Well, I should think there would be two alternatives, perhaps. The first would be the destruction of the weaker lines under those circumstances, and if that were not first, it would be perhaps the consolidation of the group for self-protection, and if there were consolidation, I suppose we would have a less attractive situation in the absence of the conference situation set-up than we have now.

Q. You mean, if some of the lines were killed off and unduly wide competition, there would be fewer lines, and the remaining lines would have a temptation to consolidate more closely than is required under the conference [fol. 1348] system, is that right?

A. I should think they would be very likely to cause, if the rate war did destroy some of them, there would be that ready evidence that if they should not agree among them-

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selves or consolidate, as the case may be, that unless they were of the same strength, they would go down one by one, or they would have to face the controlling or stabilizing of rates.

Q. Speaking of rate wars, as you have just a moment ago, can you say anything as to whether highly intensive competition between steamship carriers at different rate levels has any result with respect to the benefits which certain shippers are likely to get versus other shippers?

A. Well, now, I am not very clear on that question. Will you repeat it?

Q. I will supplement the question by saying that if Carrier A is competing actively with Carriers B, C, and D, they are all cuting rates against each other?

A. Yes.

Q. Each one of them scrabbling actively for the business—is there not temptation for one or the other of those four carriers to give special rates to a large shipper versus a small shipper?

A. Well, I should think there would be, and I believe there is ample history on that score. If it is absolutely unregulated, undercontrolled, so-called cut-throat competition, then I think that is almost bound to happen, and if [fol. 1349] it does happen the premium shipper is the large shipper.

Q. In other words, he is likely in a situation like that to get special consideration the small shipper is not likely to get?

A. He did in the early days of our railroad history, and I think he had received the same treatment before we had the Act of 1916.

Q. The same pattern prevails, doesn't it, year after year where you have a situation of wide-open competition?

A. I think that is the case, and I think the history of the Federal control, Federal regulation shows that a tendency towards that, and then an attempt since 1887 to correct those abuses, which now seem to have been done.

Q. Well, it is a fair summation, then, that what you have said up to this moment about wide-open competition is, after a time, not to the advantage of either the carriers or of the shippers as a whole?

A. I should think there could be no winners in a case of that sort, a situation of that kind.

Q. Well, now, a situation where you have fair stabilization through conferences approved by the Maritime Commission and the method of rate-making agreed on between all the members of the conferences, is there a reasonable hope of stability for shippers?

[fol. 1350] A. Well, I believe that has been a fact over rather long conferences, quite a number, as I understand it, that have been in effect for a great many years without any period of widely fluctuating rates, or, shall we say, wildly fluctuating rates.

Q. Do I understand in a period when rates do not widely fluctuate, they have been beneficial periods, haven't they, as far as concerns the commerce of the United States?

A. Well, I should think that without question that stability of rates is almost essential if you are going to have forward business or forward selling as the case may be, because I think that in the case of wildly fluctuating rates, or periods of dependency on the part of the buyer, is to buy in small quantities, because he doesn't know what to expect in the way of future or immediate fluctuation in rates.

Q. In other words, you mean to say that if he thinks he may get a considerably lower rate next week by reason of unlimited competition, he will delay the movement of his goods and thereby, if enough people operate that way or don't operate, the movement of commerce would be impaired, is that what you want us to understand?

A. That is right.

Q. I understand that you have had no experience yourself directly in shipping commerce?

A. That is correct.

[fol. 1351] Q. You have never had occasion to sign the so-called contract-non-contract rate document, have you?

A. No, sir.

Mr. Hupper: Your witness.

Cross-examination

By Mr. McGovern:

Q. Mr. Henry, have you ever seen the conference contract that is involved in this case? (Handing a document to the witness.)

A. Yes, I have seen it.

Q. When did you see it? I mean, when did you first see it? When did it first come to your attention?

A. I saw it about two days ago, I believe.

Q. But you have had no experience, actually with the conference?

A. No, sir.

Q. You have never considered it from the standpoint of a shipper as to actually going to ship under the contract?

A. No, sir.

Q. Then am I going to understand that all your testimony in response to questions by Mr. Hupper were addressed to the conference system as distinguished from the contract system?

A. I understood that to be the case.

Mr. McGovern: Then I move, Mr. Examiner, to strike the testimony of this witness on the ground that it is not [fol. 1352] relevant or pertinent to the issue presently before us.

Examiner Robinson: Well, of course, ordinarily that might be a good suggestion, but I doubt very much whether you could have the contract rate system if you didn't have the conference system.

Mr. Galland: Could we hear Mr. McGovern's comment, his last question to the witness and his comment?

Mr. McGovern: Yes. Will the reporter read back the last question I asked the witness?

(The reporter read the question.)

Mr. McGovern: May I carry on for a moment, Mr. Examiner? My point in response to your suggestion, Mr. Examiner, that while you may have to have the conference system before you can have the *conference* system, in other words, the chicken in this case before the egg, the fact remains we are talking about the egg here and not the chicken.

Examiner Robinson: Well, under the circumstances, I won't strike it out, but we will see whether we can tie it up, and if you find out later on there is no connecting link, we will go on from there.

Mr. Hupper: It is tied up already with testimony already in the record. He is talking about stability.

By Mr. McGovern:

Q. Proceeding, then, Mr. Henry, on that assumption, may I ask, do you favor competition in any field?

[fol. 1353] A. Yes, indeed.

Q. Do you, for example, favor competition in transportation rates among the railroads?

A. Do you mean competition, or do you mean a difference in rates?

Q. Well, I mean competition in rates? Presumably that would mean a difference in rates, depending on the cost of the individual railroads.

A. In that case, I believe there comes a time when the actual rate and the matter of stability are inseparably bound, and the commission in this case, the Interstate Commerce Commission, having the authority to fix the exact rate gives the shipper all the protection that he need be given.

Q. Are you familiar with the Bullwinkle Bill that was enacted into law by Congress last year?

Mr. Hupper: I object to the question about the Bullwinkle Bill. It has nothing whatever to do with this case.

Mr. McGovern: I will tie it up with stability before we finish, Mr. Examiner.

Examiner Robinson: You don't have to do it. I have permitted it before, and you can do it now.

By Mr. McGovern:

Q. What is your answer, Mr. Henry?

A. In a general way.

Q. Are you aware of the fact that the Bullwinkle Bill provides that in the railroad rate conferences each rail-

[fol. 1354] road shall at all times be free to take independent action?

A. I am not aware of that provision.

Q. Well, if you will assume that that is the case, and I can exert it is, are you aware per contra that in this conference involved here, that that is Conference 4490, that action is by unanimous action of the conference, and a single line, possibly a foreign line, may veto the rate action proposed by the other members of the conference?

A. I wasn't aware of the unanimous requirement here. That varies from conference to conference.

Q. Well, would you think that American-foreign trade was benefited by having a conference such as this transferred to a single foreign line, such as the Cunard Line, such—the power to veto rate adjustments sought by American shippers?

A. I would have a different opinion, without trying to be evasive, if I were aware of the fact that the Cunard Line would do that.

[fol. 1355] Well, I am talking about the power to do it. We don't know on the record at the moment whether the Cunard Line has or has not done it. I am suggesting to you that this Conference contract, this contract system does convey to the Cunard Line that power, and I am asking you whether, in your judgment, that is a beneficial power in the terms of American-foreign trade?

Mr. Hupper: I object.

Mr. Galland: I object—go ahead.

Mr. Hupper: I object to that question and to others of that nature. We are not here to rearrange the Conference agreement, and the complaint does not attack whether Cunard Line does or does not have that power, or any other lines in the Conference agreement. That has nothing to do with this case at all.

Mr. Galland: The voting provisions of this agreement are not attacked by the Isbrandtsen complaint.

Mr. McGovern: Mr. Examiner, I pointed out in our judgment there is no issue in this case about the Conference system. However, this witness' testimony is confined to the Conference system, and if I can't cross-examine him about that, I can't examine him about anything.

Mr. O'Connor: It has all been discussed before, brought out by Mr. Hupper's questions.

Examiner Robinson: All right, keep your blood pressure [fol. 1356] down, I agree with you.

Mr. O'Connor: You can substitute the Japanese Line in the Conference for the Cunard Line if you want to.

Examiner Robinson: I think the issues are so interwoven, as borne out by the past testimony, I don't think there is any question but that you are entitled to ask the question.

By Mr. McGovern:

Q. What would you- response be, Mr. Henry?

A. I wouldn't object particularly unless it were proven that the results of the Conference in operation, while stabilizing rates, perhaps reacted to the definite disadvantage of the American Lines. If that were the case, of course, I would oppose it.

Q. In other words, you think that it is beneficial to American-foreign trade and commerce to have American Steamship Lines convey to a foreign line the power to veto an American, a rate adjustment sought by an American shipper over American Lines?

A. I don't believe I can state it without qualification. I should think you would have to say that if there were any experience based on that provision of a Conference that led to domination of American Lines to their disadvantage by foreign lines, then I think it would be prejudicial to the American Lines and American commerce, and I would oppose it.

[fol. 1357] Q. You indicated in your testimony in chief that you believe in competition in ocean freight rates had injured the foreign trade of the United States, and I wanted to ask whether you had in mind any particular instance of such injury to that trade?

A. I believe I said un-stricted or cut-throat competition, something to that effect.

Q. Yes. Do you have any particular instance in mind?

A. No, I think they would be very easy to dig up. I don't think there would be any great difficulty in finding various examples of chaos existing. We had several of them in the domestic trade, which is perhaps not germane, the Intercoastal Conference in '20 to '28, which I believe exploded three or four times, and as I recall it, to the dis-

advantage of practically everyone, including the operators.

Q. Yes, there is this difference, is there not, between foreign trade and the intercoastal trade, and that is in the intercoastal trade the Commission can fix a reasonable maximum?

A. Yes—now—that was not true at the time.

Q. Are you aware of the fact just recently in the India-European Conference that a similar rate war exploded, and for a time cargo was being carried free of charge by members of the Conference?

A. No, I didn't know that.

[fol. 1358] Q. You didn't know that?

A. No. I didn't know that.

Q. If you did know that——

Mr. Galland: I object to the question on the ground that there is no foundation in the record for that.

Mr. McGovern: I am not certain, Mr. Examiner, there is foundation.

Examiner Robinson: Go ahead.

By Mr. McGovern:

Q. If you did know that, would that tend to alter your view that Conferences necessarily tend to stabilize rates?

Mr. Hupper: I object to that, if you did know something, so and so; that is not a proper question.

Examiner Robinson: Well, it is just an example——

By Mr. McGovern:

Q. Let me put it this way, Mr. Henry: If that were the fact, would it tend to alter your judgment that Conferences per se necessarily tend to stabilize rates?

A. May I ask this: The Conference was still in existence?

Q. Oh, yes.

A. And they were carrying cargo free of charge?

Q. Some were.

A. Some were?

Q. The rates got down progressively lower and lower, and in the Conference membership.

[fol. 1359] A. Were they doing so in competition with independent lines?

Q. No, there was no independent line in the trade.

Mr. Galland: Well, now, the testimony, so far as there was testimony, or the discussion, if it was discussion, indicated that one of the member lines of the Conference had withdrawn from the Conference and had gone off on a frolic of its own to carry traffic free, or something to that effect. There was no testimony that while the Conference hung together as a Conference, any line remaining a member of the Conference, did any of the things that Mr. McGovern described.

Examiner Robinson: I don't think there was anything in there either about there being an independent line.

Mr. McGovern: No, there wasn't.

By Mr. McGovern:

Q. The point I am coming at, Mr. Henry, was this: that if you were aware of the fact set forth by both myself and Mr. Galland, would it alter your view that the Conference system necessarily insures stability?

A. I should say it assures a greater degree of stability than any other system that I have seen advanced from any other quarter. There is no such thing as absolute stability, as I would see it, but I think it is all relative and it seems [fol. 1360] to me that really speaking, the Conference system has established rates with a far greater degree of stability than any other system or of independent free competition.

Q. Are you by chance personally aware, or do you have knowledge of the stability or lack of it in the Isbrandtsen tariffs since 1931 down to the present time?

A. No.

Q. You know nothing about that?

A. No.

Q. And you do not feel competent to discuss the contract system?

A. No, excepting in a general way, if you permit it—I have an opinion, which is simply this: that if it contributes to the preservation of the contract system——

Q. The Conference system.

A. I mean the Conference system, I beg your pardon, which I believe to be most essential for the reasons already

given, then it seems to me that there is ample authority under the law for the protection of anyone concerned in the preservation of the contract system.

Q. Well, I am a little unclear as to that answer. Are you aware, for example, that the contract system tends to confine the custom in a given trade to Conference Lines?

A. Yes, sir.

Q. And to that extent, of course, it tends to prevent an [fol. 1361] independent from getting access to that custom?

A. Yes—yes, unless he wants to make contracts of his own.

Q. Well, unless he does, and unless he can.

A. Yes.

Q. But an independent in a given trade who is confronted with having the custom tied up by the contract system is necessarily compelled, is he not, to reduce rates to a point where he can induce a shipper to ship on his line?

A. I suppose that is fair—I would rather rephrase it to say he would have to compete on the same basis as the members of the Conference who were offering contracts.

Q. But an earlier witness, whose testimony I think you heard, testified, as you recall, that it is unlikely that a single independent could give sufficient service throughout the whole year in order to compete with the Conference acting in combination.

A. Yes.

Q. Now, then, in that posture, don't you think that the attempted use of the Conference system is necessarily bound to engender a rate war?

A. Not necessarily. It seems to me that it would be asking for trouble for an independent or a Conference to begin a rate war. It is one of those situations in which no one can win, as I would see it, and I respect the judgment of the steamship operators sufficiently that I am cer- [fol. 1362] tain that they are aware of that.

Q. In other words, you think that an independent carrier who is threatened with having the custom tied up completely by Conference contracts would simply fold his tent like the Arabs and quietly go away?

A. I wouldn't say that, but he would come into the service, if the Conference rates were too high, certainly would

feel welcome to come in if he were an independent and not a member.

Q. You mean now, come into the trade, not into the Conference?

A. Yes, into the trade.

Q. And not into the Conference?

A. That is correct.

Q. But how does he get access to the shipper who is compelled by virtue of his contract to confine his shipments to the Conference Lines?

A. I think he has the alternative of joining the Conference or operating independently, as I would be, that the law provides for the Conference to be open to anyone on reasonable grounds of admission.

Q. Well, by definition, once he joins the Conference, he ceases to be an independent, do you agree?

A. That is correct.

Q. Now, I am talking about a man who is independent and wishes to remain independent. How does he exist in a trade where the entire custom is tied up by the contracts [fol. 1363] confining the patronage to the Conference Lines without engaging in a rate war in an effort to attract patronage to his line?

A. Well, I think he probably has chosen that course and he is going to have to do the best he can outside the agreement.

Q. Assuming that is the case and he chooses the rate war, does not that automatically engender a rate war, then, in so far as the Conference members are concerned?

A. I wouldn't say so. I wouldn't say so.

Q. You would expect to Conference to go right on and keep the rates up at the Conference level irrespective of the fact that the patronage was shifting to the independent with the lower rates?

A. No. I think they would have to lower their rates, but if that were the case, it would be a question of who started the war.

Q. Well, I am not trying to affix responsibility for the war; I am merely asking whether or not, in your judgment, the threatened introduction into a trade such as this of an

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exclusive patronage contract system does not automatically engender a rate war?

A. No, I couldn't say that it does automatically. There hasn't been one in this Conference, has there?

Q. The contract has not yet been put in effect, Mr. Henry. [fol. 1364] A. Well, we have the Conference rate system in other trades, as I understand it, and there are not rate wars prevailing there now, as far as I know, so far as I am concerned.

Q. Do you know of a case where the contract rate system is in effect and there are independents in the trade and there has been no rate war?

A. I can't cite one with independents in the trade, but I think the contract rate system is in effect in the Pacific-European Conference and I am not aware of a rate war there.

Mr. McGovern: That is all.

Examiner Robinson: Is there any further cross examination?

By Mr. Cockrum:

Q. Mr. Henry, you heard, did you, the questions which I asked of Mr. Rosenthal?

A. Yes, I think so.

Q. If I were to ask you the same questions, would your answers be substantially the same?

A. You are flattering my memory. I couldn't go that far with the individual questions. A great share of them had to — with importing and exporting in some detail, to which I pretend no knowledge beyond the most general and sketchy knowledge.

Q. Let me ask you a specific question or two——

Mr. McGovern: May I interject at this juncture to merely [fol. 1365] get some enlightenment, Mr. Examiner?

I did assume that when the witness said he was adopting the testimony of the earlier witness that that was an adoption of the cross as well as the direct.

Mr. Cockrum: That is what I assumed also.

Examiner Robinson: Well, only in so far as—this is

only my interpretation—only in so far as he is capable of doing it. Is that a fair assumption?

The Witness: Yes, sir.

Mr. Hupper: I didn't adopt any cross.

By Mr. Cockrum:

Q. Mr. Henry, it has been testified to on this record that certain shippers have come to the Isbrandtsen Company, stated their shipping needs, the Isbrandtsen Company have sat down with them and talked over those needs, and they have arrived at rates lower than the Conference rates, still rates at which the Isbrandtsen Company could make a reasonable profit.

Is it your position that the American shipping public is entitled to the savings represented by those lower rates charged by the Isbrandtsen Company?

A. Well, I would have to define savings further. First of all——

Q. Savings in the form of lower rates.

A. Yes, but that could be for a day or a week, or it could [fol. 1366] be for 30 years. If it were the last, I should say yes, indeed, but if it were savings that only accrued to them only over a short period of time, and ultimately led to a destruction of the rate level and consequent instability, then I should say the savings were definitely washed out by the rate war that resulted, and everyone lost, shipper and operator.

Q. Well, now, we are not assuming that there is a rate war here. We are merely assuming rates quoted shippers at which the Isbrandtsen Company is able to make a profit, yet rates below the Conference rates. We are not assuming any rate war, and anything of the sort.

A. I believe the other gentleman asked me if this wouldn't promote one—I am not sure.

Q. Well, for the purpose of my question, we are——

Mr. McGovern: May I interject? I limited my question to the use of the contract system, which is not in effect.

The Witness: Well, I would revert to the answer I made a moment ago, that if the saving were a long term saving, fine, we should have it by all means, but I think the principle might be compared with the non-dumping principle,

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which is many years old, and universally forbidden now around the world—you can't take advantage of a surplus, for example, over a short period of time to sell steel rails [fol. 1367] to break a foreign market. That has been forbidden.

It seems to me here that we would have to look at the larger picture, which is stabilization over a long period of time. And if that were possible over a long period of time, I would say, by all means we should have it.

By Mr. Cockrum:

Q. Well, you speak of dumping, Mr. Henry. Isn't dumping at less than cost?

A. It might not be.

Q. Ordinarily?

A. It might be less than the domestic price, or it might be very definitely below cost—has been both. But you might maintain your domestic price at quite a high level and dump at something above cost price.

Q. Supposing those rates were quoted for 90 days, or for a year, what would your answer be to my question?

A. It would be the same. It will take a couple of years to build one ship, so I can't believe 90 days or a year is a long period of time on which to base stabilization in the steamship business.

Q. Mr. Henry, is it your understanding that the Conference posts rates for 30-year periods?

A. No.

Q. Well, what length of period is it your understanding that they post rates?

[fol. 1368] A. I believe in this case it is 15 months—I mean, the Conference endorses 15 months, or something like that.

[fol. 1369] Q. You say that you are not familiar with the contract which has been introduced as Exhibit 14?

A. I just glanced over it. I don't pretend any particular knowledge about it. I read it once, and am willing to answer questions on what I might have picked up with one reading.

Q. In that Exhibit 14, aren't the rates made for a period of 90 days?

A. I don't know that.

Q. You speak, Mr. Henry, of stability. Do you speak of stability achieved through monopoly?

A. Well, there is a monopolistic character to an ocean conference, just the same as there is to a right of franchise for a street railway or a lighting company or the telephone company, or anything else. I think there are characteristics of monopoly in it, yes.

Q. Monopolistic characteristics, which are inherent in your concept of stability, aren't there?

A. I don't know quite if a yes or no follows that. There is, shall I say, the very definite characteristic of monopoly in conference agreements.

Q. You speak of rates of public utilities, railroads, motor carriers, and so forth, and liken them, certainly in some respects to steamship rates. Isn't it a fact that all of those public utility rates are controlled by the regulating agency?

[fol. 1370] Mr. Hupper: I object to that question. I don't think he has likened steamship rates to rates of other people.

Mr. Cockrum: Well, now, Mr. Examiner, he has adopted certainly the direct testimony of the previous witness.

Mr. Hupper: All right, he has not in respect to anything that he is not qualified to answer. My question to him was a general one, "Did he have any exceptions to make on it?"

Mr. O'Connor: Oh, no, he asked him if he approved.

Examiner Robinson: We don't have to argue. I will allow the question.

The Witness: Would you repeat the question?

(The pending question was read by the reporter.)

The Witness: I don't believe I spoke of the rates of the railroad or utilities, I merely compared the fact they are monopolies in many instances with the fact that there is some of the characteristics of monopoly, or there are some in an ocean conference. I wasn't comparing their rates. I believe that is correct.

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By Mr. Cockrum:

Q. Mr. Henry, you say there are monopolies. Is it not a fact that they are controlled monopolies?

A. Of which are you speaking now?

Q. Railroads, motor carriers, and public utilities.

A. I would say they are regulated monopolies.

[fol. 1371] Q. You would say they are regulated monopolies?

A. Yes—not in their entirety, of course. We have to qualify that. They are monopolies, or perhaps a certain section of their line, or a trucking line, a certain section of its line, it has a franchise for that for public convenience, and no other.

Q. And in addition to that, is it also not true that the Interstate Commerce Act, Parts I and Parts II, both preserve to the individual railroads and the individual motor carrier lines the right of independent action?

A. You mean in so far as making rates is concerned?

Q. Yes, sir.

A. I should not think they had much independent action when the Commission can fix the actual rate. They have the independent action, yes, within that rather narrow limit. I think that is not comparable to the steamship business at all.

Examiner Robinson: Are you thinking of terms of initiating a rate? I think that is probably what you have in mind. I don't want to put anything in your mind, but——

Mr. Cockrum: Not necessarily in terms of initiating a rate in the first instance.

Examiner Robinson: Well, it could be the second instance.

Mr. Cockrum: Or the second one.

Examiner Robinson: I am just trying to get what you [fol. 1372] mean.

Mr. Cockrum: I think we have the same thought, Mr. Examiner.

The Witness: Well, if you took it literally, the railroads can't make a rate at all. They can, as the Examiner says,

initiate it, and it cannot be effective, it must be approved, as I understand the law.

By Mr. Cockrum:

Q. Approved by the Interstate Commerce Commission?

A. Yes.

Q. Well, then, supposing a rail line or a motor carrier line desires to publish a different rate. Is there anything in the Interstate Commerce Act to your knowledge that forbids it?

A. Not if it is approved by the Commission.

Examiner Robinson: Well, let's get technical just a minute. We may be proceeding on a false assumption here. I may be all wrong, but is there anything in the law that requires the ICC approve every rate? I don't think there is. The lawfulness of the rate only comes into issue if somebody complains about it.

Mr. McGovern: The operation of law, a rate that is filed by the ICC and stands on the books for 30 days and is not suspended, becomes the lawful rate.

Examiner Robinson: That's right, until somebody complains.

[fol. 1373] Mr. McGovern: Until somebody complains. The law also provides, however, when a rate is filed with the ICC it cannot be suspended until the Commission first determines that the rate is unreasonable.

Examiner Robinson: That's right.

Mr. McGovern: Because within the zone of reasonableness the Commission has not power to suspend.

Examiner Robinson: As long as we understand each other now, go ahead.

Mr. Cockrum: I think the answers to my questions, Mr. Examiner, are sufficiently clear. That is all.

Examiner Robinson: Are there any further questions?

By Mr. McDowell:

Q. I would like to ask one or two questions, Mr. Henry. Now, as I understand your testimony, you are not experienced in the actual operation of foreign shipping, your knowledge is gained from your teaching and such study as you have made in connection with that?

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A. That is correct.

Q. So that I think it might be proper to discuss one or two of these questions on a somewhat theoretical basis. Now, let us assume that the conference contract system is put into effect on all commodities, or substantially all commodities with such limited exceptions as are normally insignificant, do you understand that the operation of that system is to require a shipper who does not agree to [fol. 1374] patronize the conference lines exclusively to pay a higher rate for such shipments as he may make on the conference lines?

A. Yes.

Q. And would you say that that would tend to bring about a condition in which the shippers who require more service than an independent line can offer, or who may think they may at some time require more service than an independent line can offer, to agree to patronize the conference lines exclusively?

A. Well, I think you would have to trade the possibility of disruption against the factor you mentioned. There is a factor of compulsion, of course there is. I recognize that. But I certainly would put all the desirability of using what fair mechanisms anyone might devise in the laws that exist for the stabilizing of rates, and this contract system, of which I am frank to say I have not specific knowledge from seeing it in operation or having worked with it, it seems to be a devise that has been in effect for 30 or 40 years at least, and furthermore, a device that was known as far back as the Royal Shipping Ring's Report in 1909, and again, to the Alexander Committee and the Congress in the passing of the Act of 1916 did not see fit to forbid it. It specifically forbade rebating, which was also in existence at the time, but they ignored this, and I think quite pointedly ignored it, because the full knowledge of it was there.

[fol. 1375] Q. Do you regard the contracts which considered by the Alexander Committee as between shippers and shipping operators as being identical with the exclusive patronage contract rate system now tendered?

A. Apparently they were not definitely identical, and as a result of it, some of the practices incorporated in those

contracts at that time have been specifically forbidden, and rebating was the particular one of which the conferences were guilty, and which have been corrected, and was.

Q. Mr. Henry, I understood you a moment ago to say that the Alexander Committee pointedly ignored this contract practice.

A. No, I said the Congress in passing the Act of 1916 did not specifically prohibit the contract system, even though it was before the Congress, if they wanted to make use of it in the findings of the Alexander Committee.

Q. Are you aware of the fact that the Alexander report specifically listed the contract practice as one of the lesser evils, that is less in its evil effect than the deferred rebate system?

A. No, I am not familiar——

Mr. Galland: Pardon me, but I would like to object to that characterization. The Alexander Report did not list it as a lesser evil or a greater evil, it merely described the practice without characterization.

[fol. 1376] Mr. McDowell: Mr. Examiner, I think we ought to let the witness answer the question.

Mr. Galland: No, the witness ought not to be allowed to answer a question that is loaded in that fashion, where no proper foundation for the question has been laid.

Mr. O'Connor: Are you going to testify instead of the witness? He was asked his opinion. He said he had read the Alexander Committee report. He just testified what he understood it to be.

Mr. McDowell: I think it is quite possible the witness might agree with me instead of Mr. Galland.

Mr. Galland: I don't care whether he does or not, but I object to the question.

Examiner Robinson: I don't think anybody has to take up for the witness. I think he is fully qualified to answer. Let him answer and see what he has to say.

Mr. Hupper: I just want to say the report shows what it says and doesn't need to be characterized.

Examiner Robinson: Go ahead and answer it.

The Witness: It is my understanding the Committee pointed out definitely the abuses that were practiced by the conferences at the time and by the contract system

within the conferences, and recommended the discontinuance of certain of those abuses, including the use of fighting ships and recommended the discontinuance of certain of those abuses, including the use of fighting ships and re-
[fol. 1377] bates, and in order to specifically recommend the discontinuance of rebates, they would almost have to take cognizance of the contract system, otherwise there would scarcely be rebating. That is my recollection of the report.

By Mr. McDowell:

Q. Well, I will ask you specifically so we may have a direct answer on it. Do you have any recollection as to whether or not the Alexander Committee Report listed contracts between the shipping lines and the shippers as being one of the evils then known under the conference system?

A. No, unqualifiedly, I don't recall that.

I think you might add there, or if I might add, no one that I know of has ever contended that the contract system is perfect. I also failed to find anyone to suggest an acceptable substitute for it.

Q. Your understanding is that the Congress prohibited certain evils upon the recommendation of the Alexander Committee?

A. Following it.

Q. Deferred rebates, fighting ships, and so forth?

A. Yes.

Q. Are you also familiar with the general provision in the Shipping Act of 1916 of retaliation of discrimination against shippers, for patronizing other lines?

A. Yes, in a general way. I understand that is forbidden.

[fol. 1378] Q. So that when you say that the Congress pointedly ignored the conference rate system, you are then giving it as your opinion, I assume, or you are acting on the assumption that the prohibition of discrimination and retaliation against a shipper was not intended and not suitable for prohibiting such a process as the Contract Rate System?

A. No, as I understand it, my statement was substantially this, that the existence of the contract system was known, disclosed, and analyzed by the Alexander Committee. The evils of the contract system, as it then existed, were also disclosed, the glaring one being, of course, the question of rebating. Now, in order for the Congress to forbid rebating, it seems to me they had to be aware of the fact that the contract system was in existence, and that it was not perfect, and they were attempting to rectify the glaring errors and evils in it by forbidding rebates for one thing.

Q. You do recognize — forbade other evils in addition to the prohibition of deferred rebates?

A. Yes, but that specifically applies to the contract system, I would think.

Q. It is your understanding that under the contract rate system a dual level of rates is maintained as a contract rate and a non-contract rate?

A. Yes, sir.

Q. And that the non-contract rate is applied to the shipments of those shippers who do not agree to patronize the [fol. 1379] conference lines exclusively?

A. Yes.

Q. And that furthermore, under the provisions of the freight agreement, which is here in evidence as Exhibit 14, and which I believe you have before me, and you testified you had examined, that where a shipper has agreed to patronize the conference lines exclusively, and thereafter patronizes a non-conference line, he must pay a penalty or a forfeiture of the additional amount on the freight which would have been applicable to the shipments with respect to which he shipped by non-conference lines?

A. There is some such provision to that effect in here, I think.

Q. Do you know of any distinction or of any reason for the distinction between the applicability of the contract and the non-contract rate to a particular shipper other than the willingness of the shipper to agree to patronize conference lines exclusively, or his loyalty to the conference lines, having once agreed to patronize them exclusively?

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A. Well, I don't know exactly the details of that requirement. I take in general they indicate that they will give him space without particular assignment; they also, as I understand it, as I understand the contract procedure, provide for release from the contract if, within a reason-
[fol. 1380] able time, they are unable to provide space.

Q. Yes, but the only consideration for, what I am coming at is the consideration for the enjoyment of the contract rate is the shipper's agreement to patronize the contract lines exclusively, isn't that correct?

A. Well, I am not prepared to say. I have read this, as I said, once. I don't know what might be consideration, whether the 20-day notification clause might be consideration—I am not qualified, I am afraid, to pick out consideration in the contract in a legal sense at all.

Q. Would you agree that the effect of the application of the contract-non-contract rate system would be to bring the shippers into agreements to patronize the conference lines exclusively?

A. I should think it would have that tendency. Some of them would find it to their advantage, perhaps, to remain outside and not find the contract.

Q. Now, in general, however, you would think that the effect would be to bring the shippers under contract with the conference?

A. Generally, I should think so, and specifically the shippers who ship with great frequency.

Q. Now, assuming the existence of an independent line in such a trade, do you not think that such an independent line would have to offer special concessions or inducements to shippers to get them to patronize such independent line
[fol. 1381] in the face of the contract rate system?

A. It is possible that they would.

Q. Wouldn't that be the natural economic—wouldn't that be the economic pressure there if the independent lines attempted to get business?

A. I think the tendency would be in that direction. There are always shippers who do not demand frequency, who might patronize the independent line, and probably do.

Q. Would it be your opinion that as a general economic phenomenon such an independent might reasonably be ex-

pected to have to offer rate concessions to shippers who otherwise would feel it more desirable to deal with the conference?

A. I would think he would, but I believe to the degree that that is true you find also that it proves the desire for stability on the part of the shipper. He must have it, as I would see it.

Q. That would tend to bring about instability, rather than stability, wouldn't it?

A. No, I say to the extent there is that pressure brought to the independent line to reduce his rate and to offer concessions, that pressure itself is evident of the fact that in order to obtain business, in order to obtain accommodations for his exports or imports, the shipper looks for stability, and if he isn't going to get stability, he is going to suffer, as I have said a while ago. If he does get it, [fol. 1382] he is willing, I think, to pay for it, for the mere assurance that he can do forward trading, that he can have some assurance that the service and the rates will be adequate within reason.

[fol. 1383] Q. Might it not rather be the reflection of the fact that the shipper feels under an economic necessity to avoid having to pay the Conference the higher rate which would be assessed against him if he did not agree to patronize the Conference Lines exclusively?

A. That could happen in individual cases. I should think that might be probably his recourse under the law for abuses that would creep in. I am certainly in favor of seeing to it that the shipper, if he does undergo such compulsion, has the protection that the Government should offer to him. I think there is some protection available to him now.

Q. The Government does not require certificates of convenience and necessity for engaging in the shipping business?

A. No.

Q. The Government does not fix the rates of the shipping lines, does it?

A. That is correct, but the Government has a right to interfere when things are taking place that are prejudicial to American commerce or when they are unduly discriminatory as against persons, places, and localities.

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Q. Isn't it generally our economic policy in this country that where the Government does not regulate rates or charges, that it relies in part, at least, for the protection of the public interest upon freedom of anyone to engage in business?

A. Yes, I should think so, but not in this field. I don't see how you can have regulation of that character when [fol. 1384] the whole world is free to enter into this carriage. We can't regulate the foreign rates, and if we can't regulate the foreign rates, we certainly aren't going to regulate our own. To do so would be to regulate us out of the business and to discriminate against our own exporters and importers, so if we can't regulate these rates, and if the foreign governments, if there is an unanimity of opinion in an international sense which, of course, there isn't, the alternative to stability is, in my opinion, something such as we have, namely, the Conference practice which has existed for a long time.

Q. It is your understanding that legally the independent line is free to engage in trade on an independent basis?

A. That an independent line is free to engage in a trade——

Q. In a shipping trade on an independent basis?

A. Oh, I think they probably are. I don't know anything that would prevent it. The Maritime Commission has considerable authority, and I am not too familiar with their authority to permit trading over any one of the 28 or 30 or 32 routes, whatever there might be.

Q. In your study of shipping affairs and transportation matters and policies, have you had occasion to familiarize yourself with such Court decisions as the Swayne & Hoyt decision in the Supreme Court, Swayne & Hoyt case, which grew out of a decision by the Maritime Commission, con- [fol. 1385] tract routing instruction matter?

A. Not particularly, excepting that the Maritime Commission cites it.

Q. Are you aware of the fact that in that case, first the Maritime Commission, or the Shipping Board, its predecessor, and then in agreement with the Supreme Court, condemned the exclusive patronage contract rate

system as being monopolistic and as being identical in purpose and effect to the deferred rebate system?

Mr. Hupper: You are talking now about an intercoastal decision.

Mr. McDowell: I think the witness can handle himself, Mr. Hupper.

Mr. Hupper: I am not suggesting he can't.

Mr. Galland: I think we can argue the law in our briefs.

Mr. McDowell: Well, we have a witness here who is qualified.

The Witness: I have said I have not read the Swayne decision, if that makes any difference.

Mr. Galland: If you want to introduce the decisions in evidence, go ahead, I won't object, but I do object to the characterizations and decisions and statutes and the rest of it.

[fol. 1386] Mr. McDowell: I don't see how we can get at the——

Examiner Robinson: Mr. McDowell, ordinarily I would let him answer it, but he says he hasn't read the decision, so I think we are wasting time. I think that is the deciding factor in this case.

By Mr. McDowell:

Q. Are you familiar with the fact that that has been the law enunciated in that case?

A. I don't relate that statement with your previous question, that was the law.

Q. That is that the law enunciated in that case was that the exclusive patronage contract rate system was unlawful under the Shipping Act as being monopolistic and as being identical in effect with the deferred rebate system.

A. That is not the law——

Mr. Galland: Just a minute. You haven't stated the case fully enough to be accurate——

Mr. O'Connor: He asked him if he was aware of it.

Mr. Galland: Mr. Examiner, this is the most improper kind of questioning, and I am entitled on the record to object, and I do.

Examiner Robinson: He said he hasn't read it.

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Mr. McDowell: He is put forward here as an expert familiar with this field.

Examiner Robinson: And he also said that he knows he [fol. 1387] has seen that the Maritime Commission has referred to the case, but he is not familiar with it.

Mr. McDowell: He needn't have read the decision to be familiar with the doctrine enunciated——

Examiner Robinson: I appreciate that.

Mr. Hupper: Why does this witness have to be questioned about what the law is? Can't we argue it on briefs? Everybody knows what that decision held who knows law at all.

Examiner Robinson: I think it would be better not to pursue that any further. I mean, the witness obviously doesn't know.

Mr. Hupper: It related to a situation where there were specific rates on file that had to be adhered to, and contract rate couldn't apply in the intercoastal trade.

By Mr. McDowell:

Q. Mr. Henry, with respect to the discussion that took place earlier concerning wide open competition, or cut-throat competition, as it was called, you, I think, talked about the situation which has prevailed in the railroad industry prior to 1887, with the passage of the Interstate Commerce Act, and to situations which had prevailed in other transportation fields.

Now, is it your view that this type of wide open cut-[fol. 1388] throat competition is possible under the regulation which has been vested in the Maritime Commission by the Shipping Act?

A. I should think it could be, yes, at least sufficiently under any circumstances to impair the service, and probably weaken certain of the lines, and if you have that condition, I think you are going to find instability and the disadvantages that go with it.

Q. Doesn't the Shipping Act prohibit cut-throat competition?

A. Well, you will have to define cut-throat competition in this case—I didn't take it from your question—there is nothing to my knowledge in the law that prevents the

steamship lines from lowering their rates in the foreign trade.

Q. Precisely. But we were talking about cut-throat or wide open, as you previously said, competition.

A. Well, it could ultimately, I think, come to a question that would involve weakening of the lines and destroying stability, frequency of service, and regularity of service, because they, as I would see it, they could not hope to make a living under a situation of that kind, and if they couldn't make a living, we are bound to have, I think, the things mentioned.

Q. Well, I asked, did I not, whether or not the Maritime Commission did not have authority under the Ship-
[fol. 1389] ping Act to deal with cut-throat competition?

Mr. Hupper: I object to that question. Why should he be catechized about the law?

Mr. McDowell: Quoting rates below cost.

The Witness: Well, rates don't have to be below cost for you to starve to death.

By Mr. McDowell:

Q. Your rates, that is the rate of a high cost operator, might not be below cost, and yet he might not be able to compete with a line whose rates were above cost, is that what you are coming at?

A. Well, that is the whole basis of our present subsidy scheme, to equalize costs.

Q. That is designed, is it not, to take care of the differentials in cost between the relatively high cost American operators and the lower cost foreign operators?

A. Yes.

Q. I gathered from your earlier testimony that you do not, in all cases, think that stability itself is sufficiently beneficial to American commerce to justify the cost which would have to be paid—I am referring now specifically to your testimony in response to a question of Mr. McGovern's about the possibility of a foreign member of the Conference blocking a rate reduction with harmful consequences to an American shipper, and I understood you to say in
[fol. 1390] that connection that there you would have to

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measure the stability against the harmful consequences of such action; is that your view?

A. Substantially, I think, yes.

Q. Well, you don't think that stability in itself, then, is necessarily in itself per se justification for anything that might happen?

A. No, I don't think that stability is a substitute, or should I say that stability is anything we want to give in exchange for rebating, for example, or unjust discrimination, I don't think that we should in any case forsake the fact that those we now recognize as being unjust practices.

Q. Do you think that the achievement of stability would justify the putting of an independent American Line out of business?

A. Well, that would have to be related, I think, to the overall picture.

Q. I am speaking now about Conference action, not by regulation of the Maritime Commission.

A. Well, I would say that the Conference doesn't put it out of business, in my opinion. There is an alternative for the line, and if it doesn't choose to accept the alternative, and it is my understanding that we do prohibit rebating, the use of fighting ships, which was the old method [fol. 1391] of controlling independent competition, and if those things are forbidden and the Conference is open to the independent, then I believe the choice rests with the independent line.

Q. Where the independent does not choose to join the Conference, even though you recognize that he has a legal right to engage in the business, do you think that the achievement of stability justifies the Conference in putting him out of business, would justify the Conference in doing so?

A. Well, I wouldn't say the Conference put him out; I would say if he goes out of business, he goes out, but you would have to trade in my opinion the disruption and dissolution of the Conference and possible rate wars and destruction of more than one line for the preservation of an independent line who did not choose to enter the Conference when it is open to him on reasonable conditions.

Q. And you think it would take actual existence or threatened existence of a rate war, or something of that character, to justify the exclusion of an independent, assuming now that the independent might be excluded through the application of the exclusive patronage system?

A. By "excluding" you mean that the independent would be destroyed?

Q. Yes.

[fol. 1392] A. Well, then I was misinterpreting your question as you went along.

Q. I am sorry. Do you see what I am coming at?

A. I am not so sure.

Q. Well, I will run back over it a bit, if I may.

A. Sorry.

Q. I am asking you to assume, now, I think we are talking in pretty largely theoretical terms, but I regard you as being qualified to discuss this matter in theoretical terms, that the practice of the exclusive patronage system, if carried to its full consequence, its full effect of being put into effect on all commodities, and the shippers, gradually being induced economically to agree to patronize the Conference Lines exclusively, that the natural economic effect of that might be the exclusion of an independent who was unwilling to join the Conference from business in the trade.

A. That might be the case.

Q. Yes. Now, I am asking you whether in your opinion such exclusion would be justified in the interest of stability in the absence of a definite showing that the non-exclusion of the independent by those means would produce a rate war or destroy stability?

A. Well, if the destruction of the independent were merely incidental to the carrying out of a stabilizing procedure, such as a Conference and contract system, then [fol. 1393] I should say that we would have to accept the elimination of the independent in the common interest, that if you did not, the tail is wagging the dog.

Q. You say that in the face of your earlier recognition that your general economic philosophy is that the public is to be served by the freedom of all engaged in the trade?

A. He is free to engage in it as long as he can last.

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Q. And further, that there is no limitation or restriction under the Shipping Act on his freedom of coming into the business?

A. I don't see anything contradictory in the two statements.

Q. Well——

A. (continuing) They are not setting out to destroy him, as I see it. I don't mean to read the mind of the Conference, I don't know that, but it seems to me that they are not setting out to destroy him. If, incidentally, he is unable to compete as an independent, and the overall of justice is the stabilizing of rates, with the values that are admitted on all sides from stabilized rates, then I can't believe they could say that you must discontinue something that is in the common interest in order to preserve an independent or two independent lines, or whatever number.

Q. In other words, you think that would be the exclusion of the independent would be economically justified [fol. 1394] there in the interest of stability?

A. You mean the incidental destruction of it?

Q. Yes.

A. The incidental destruction of it, I don't think "justified" is the right word. I think it is something that is bound to follow.

Q. Now, there you are talking in terms of a definite production of stability, not merely a theoretical stability as flows from the contract rate system. In other words, you would want to be satisfied before you reached that conclusion economically.

A. Well, I would want to be satisfied first of all that the contract system was an inequitable one and not discriminatory, and that the Conference itself was reasonable, was a reasonable Conference approved by the proper authority, and that did its job in all respects. Then, if that were the case, and that Conference were open to independent lines on the same terms, then I think it would be probably a matter of allowing an independent line to destroy the stabilizing influence that the Conference had throughout the years.

Q. Now, you talk about the reasonableness of the Con-

ference. You are aware, of course, that the Maritime Commission has no control over the reasonableness of the Conference rates?

A. No, but I mean——

Mr. Galland: I object again to this line of questioning. [fol. 1395] It is a case of a disputed proposition.

Examiner Robinson: I still say he can take care of himself. Go ahead.

Mr. McDowell: I think the witness can discuss this very adequately.

Examiner Robinson: All right. Go ahead.

[fol. 1396] Q. Do you think that as an economic matter the freedom of an independent line to engage in the trade is a check upon the reasonableness of the rates which will be fixed by the conference?

A. That is ability to engage in the trade is what?

Q. Is a check upon the reasonableness of the rates which will be fixed by the conference?

A. I suppose there is that tendency, just as there would be tendency for the charter or tramp ship to come in in the event there was an increase in rates to a higher level. I think there would be a check. Any alternative would constitute a check.

Q. Now, we are discussing this matter of stability. Are you aware that, or would you say there has been stability in the rates in the trades involved in this proceeding over the past four years of the post-war period?

A. I am not familiar with it, with the level of rates in this trade, I am not familiar with the fluctuations and rates.

Q. You are just assuming, then, that the introduction of the system is necessary to maintain stability without knowing anything as to whether or not stability has existed without the system?

A. No, I think if you care for the printed word that there are any number of references of people who are in the steamship business, economists, and others, who have made a study of it, who contend as I am contending today, [fol. 1397] that conferences do exert a stabilizing influence. I think there is ample evidence to that effect, so I needn't assume it for this particular trade.

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Q. I understand you are speaking generally, and you have no knowledge with respect to whether or not stability has been achieved in the trade involved in this proceeding without the exclusive contract system?

A. Well, you may, referring it to the conferences in general and not to the contract system, you can go back to the Alexander Report, and I am getting a little timid about mentioning that again—they suggested that the great majority, if not all of the 80 conference agreements they investigated grew out of the rate wars which, to my mind is ample evidence that without the conference agreement there is not stability.

Q. I again ask you the last question, and I would like to have a specific answer to that question.

Mr. McDowell: Would the reporter read the question back to the witness?

(The last question was read by the reporter.)

The Witness: That is correct, I have no particular knowledge of that trade.

Mr. McDowell: That is all.

Examiner Robinson: And are there any further questions?

Mr. Galland: Yes, I have a few.

[fol. 1398] By Mr. Galland:

Q. You referred, Mr. Henry, to the history of rate wars in the domestic trades. I think you spoke of the intercoastal trades?

A. Yes.

Q. Now, wouldn't you say that the influences which are at work tending to precipitate rate wars in the foreign trade are considerably more substantial than those in the domestic trade?

A. Well, I should think that wherever you have the introduction of people of several nations, you are more likely to find that situation to be true.

Q. Based upon the differing cost levels under which operators under various flags necessarily function, is that correct?

A. With ourselves at the top.

Q. And it is your understanding that quite generally the cost of foreign flag operators are less than the cost of United States flag operators, is that not correct?

A. Yes, that is correct.

Q. And from that, would it not follow that the low cost operator would be able to survive after the rates had been cut below a level which would return cost or cost plus a profit to the higher cost United States flag operator?

A. Yes.

Q. Now, relative to Mr. McDowell's question as to whether over the past several years there has been sta-
[fol. 1399] bility in this particular trade, I think you said you had no special knowledge of whether there had been or not?

A. That is correct.

Q. Are you in any way familiar with the statistics as to the volume of traffic, not necessarily in tons, but relative to pre-war volume in this particular trade?

A. No.

Q. Do you know whether it has been large or small since the war?

A. No.

Q. You were questioned by, I think, Mr. McGovern as to whether the independent is practically compelled by the exclusive patronage system to fight the conference by starting a rate war. Are you aware that an attempt to start a rate war in the Gulf/Havana trade was recently enjoined by the action of a Federal court?

A. I saw some newspaper reference to it. I have no particular knowledge of it.

Q. Now, to the extent that the Isbrandtsen rate structure has been relatively stable in recent years, would you say that that was in some measure the result of the fact that Isbrandtsen's main competition has come from conference lines whose rates were established under conference arrangements?

[fol. 1400] A. I should think in the absence of the conference as has been repeated many times here today, you would not have stability, nor would Isbrandtsen Company have been able to stabilize their rates over this period of time, if that is true that they have.

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Mr. Galland: Thank you. That is all.

Examiner Robinson: Are there any further questions?

Cross-examination

By Mr. O'Connor:

Q. Do you devote all your time to teaching at Wharton?

A. No, sir.

Q. Are you known as a professor out there?

A. I have the rank of professor, yes.

Q. How much time do you devote at Wharton?

A. If you include the time I spend in the classroom and the, and the time I spend on the subjects outside the classroom, I should say about half of my time.

Q. What do you do otherwise?

A. I am Dean of student affairs.

Q. In the college?

A. For the university.

Q. Have you been connected with Wharton or the university for 27 years—I understand?

A. I was—this is my 28th year, following graduation.

Q. You have a professor Kramer, don't you?

[fol. 1401] A. Yes, sir.

Q. Is he associated with you in Wharton?

A. Yes, sir.

Q. What is his full name?

A. It is Roland—I can't remember whether it is an L or an R like in Rose—perhaps someone can supply it—K-r-a-m-e-r.

Q. He teaches transportation, too, doesn't he?

A. He teaches foreign trade. I believe his concentration has been in foreign trade. He taught transportation for a great many years, and perhaps he still does in the evening sessions, I am not too sure of that.

Q. Well, does he teach in this same department as you?

A. He does, if he still is teaching his transportation work in the evening school.

Q. Well, what does he do other than teach?

A. Nothing that I know of. In other words, he is a full-time member of the faculty. He has no administrative

work at the university, and presumably he devotes his time to——

Mr. Galland: May I ask what the point of this is?

Examiner Robinson: I would be interested to know, too.

Mr. Hupper: Is Dr. Kramer at issue in this case?

Mr. O'Connor: Well, I am entitled to inquire who his associates are in teaching this subject.

[fol. 1402] Examiner Robinson: No, I don't think there is any connection there. I mean, I am perfectly willing, I think I have demonstrated I am pretty broad-minded on this thing, but I don't get the connection.

Mr. O'Connor: I never knew it was the duty of a cross-examiner to disclose in the first question what he is aiming at.

Examiner Robinson: If somebody makes an objection, even I have a right to ask. I don't always get the answer.

By Mr. O'Connor:

Q. Are you aware of speeches that Professer Kramer has been making on this particular subject?

A. Not at all. I don't read his speeches. We are the best of friends, and I have too much required reading, I am afraid, to branch over into speeches that Dr. Kramer makes. I would be glad to listen if I were there.

Q. Are you aware the Mr. Crinkley made a speech in Philadelphia not so long ago on the subject of conferences and the conference rate system?

A. I am sorry, I am not.

Q. Are you aware that at the same business group that Professor Kramer later answered him?

A. No.

Q. You weren't consulted about his speeches?

A. No.

[fol. 1403] Q. You spoke about forwarding trade, and you also said something about understanding that the conference agreed to maintain the rates for 15 months.

A. No, no, my understanding was that the contract endured for 15 months. That might or might not be true. I looked at it once—that was my impression.

Q. How long do you understand the agreement is on the part of the conference to maintain the rate so that

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the shipper or importer can be assured a connection with his forward trading?

A. Again, I have a faint recollection that there is a matter of 2[illegible]ys mentioned.

Q. Would you say that was long enough to assure the shipper of forward freight?

A. I don't feel confident to answer that. I am not a shipper or receiver of freight. I don't know what would be a reasonable time.

Q. Well, in teaching your classes about this conference system, do you refer to such matters at all as the needs of the shipper to assure stability or planning ahead?

A. Yes, we do, but we seldom reduce it to the question of how long a warning the signer of the contract might require in his business.

Q. Have you any idea of what might be a reasonable minimum of assurance?

[fol. 1404] A. I should have no idea, shouldn't think my opinion would be worth anything. I don't know what would be reasonable for an importer or an exporter.

Q. You don't think that is any important part of instructing the young transportation experts?

A. Oh, I should think it would be, think it would be very important, but to became a world authority on the bill of lading might take two or three years, and we haven't got the time, and maybe I haven't got the ability, but we do the best we can to give them the overtones of transportation and their importance in this general economic scheme of things.

Q. How long do they sit getting these overtones?

A. Well, they are required to take, those who want to go on with transportation are required to take a so-called principal's course, in which there is discussion about all fields of transport, rail, ocean, highway, motor, and air, and then in the particular course, I think we confine ourselves to transportation by water.

Q. What is the total in hours, Professor?

A. Two hours a week.

Q. For how many weeks?

A. For the school year.

Q. That is 32 weeks?

A. It varies—about 34 weeks.

Q. That would be 68 hours. Are they qualified then, for [fol. 1405] any particular——

Mr. Galland: Mr. Examiner, if I can save any time by objecting, I object on the ground that this is completely irrelevant.

Examiner Robinson: I agree with you.

Mr. O'Connor: It is very relevant.

Examiner Robinson: I don't think what his students study is relevant.

Mr. O'Connor: I am testing the ability of this witness to testify.

Examiner Robinson: He has already testified and answered you on that, Mr. O'Connor, that he thinks it would be very fine, but he doesn't know the answer.

Mr. O'Connor: I am asking him about what he teaches about. He is here as a professor and an expert on this subject, and I want to find out.

Examiner Robinson: I grant you you can cross-examine, but he has already told you he knows nothing about that.

Mr. O'Connor: I am asking him how he trains the students, whether they come out as transportation experts.

Examiner Robinson: It is highly immaterial how they come out, or whether they come out. Does he know or doesn't he know, that is what we are interested in.

Mr. O'Connor: Well, I am asking him, "Do you know whether they come out——"

[fol. 1406] Examiner Robinson: I am not going to let him answer. I don't think it is relevant, don't think it has got anything to do with it, and I don't want him to answer.

Mr. O'Connor: I don't think you can laugh it off.

Examiner Robinson: I am not laughing it off.

Mr. O'Connor: You are surrounded by a lot of people who are smiling——

Examiner Robinson: I am not interested in what they do. It is up to me to sustain or reject. In my opinion, it is not pertinent.

Mr. O'Connor: I want to find out what this man teaches his students.

Examiner Robinson: It has nothing to do with what his students do or don't do, that hasn't a thing to do with it.

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Mr. O'Connor: May I not ask him what he trains his students for?

Examiner Robinson: He has already told you he doesn't know anything about the reasonable period for the stability of rates.

Mr. O'Connor: I want to know what he is training his students for. He is not training them for medicine, and I want to know what——

Examiner Robinson: The objection is sustained, so let's go on from there.

[fol. 1407] Mr. O'Connor: Now, you can't, of course—I am afraid that the overwhelming snickering at your right and left, and which you make no attempts to suppress at this hearing, Mr. Examiner, but that has influenced you in that particular respect.

Examiner Robinson: No, if you would like to put that on the record, it is quite all right with me, but I can assure you there has been no influencing, and there won't be, and I have also heard quite a bit of discussion to your right and I haven't said anything about that. We have to have a leavening of discretion, and I hope I have used it.

By Mr. O'Connor:

Q. Now, Professor, in teaching the students for this unknown career that they are going to embark on, do you acquaint yourself with the decisions of the United States Maritime Commission?

A. To a certain extent. I don't pretend to read every decision, nor do I pretend to know about every decision of the Maritime Commission.

Q. But you have them available there, do you not?

A. They are available.

Q. I mean, to you?

A. To me.

Q. And to your students?

A. No.

[fol. 1408] Q. Is it your opinion, Professor, that an independent American carrier should be denied access to the business of American shippers or importers because he happens to be an independent and not a member of the Conference?

A. I certainly believe he should not be denied access because he is an independent. If it were based on that, I should say definitely not.

Q. Would you favor the happening of any event which would deny him that access?

A. I would have to know about the event.

Q. You spoke of the rebates that were exposed in the investigation by the Alexander Committee, and that they, in the 1916 Act were forbidden by law, is that correct?

A. Yes, sir.

Q. You referred to them as rebates, is that correct?

A. Yes.

Q. Well, now, let me state to you a case and ask you if that is what you understood was the situation which was forbidden, that these Conferences signed up shippers at a rate for the goods, we will take any commodity, and we will say it was $24 a ton, and the shipper agreed to confine all his transportation with the Conference for one year, and at the end of the year if the shipper had not used any carrier other than the Conference members, it would get a rebate of 20 per cent or $4 a ton; that is a correct [fol. 1409] statement of the rebate system?

A. Formerly?

Q. Yes.

A. Yes, as I understand it.

Q. Now, under this contract-non-contract or exclusive patronage system, do you understand the operation of that to be that the shipper ties up with the Conference to give their patronage exclusively to the Conference, and if they so sign up, they pay $20 a ton, but if they do not sign up, they have to pay the Conference $24 a ton; do you understand that is the operation?

A. I understand it in principle. I am not sure of the figures.

Q. Now, will you state to us in your opinion as an economist, what is the difference between those two systems?

A. What is the difference between charging $24 to one group and $20 to another?

Q. And giving a rebate at the end of the year, or giving the discount at the beginning of the year for signing up the contract?

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A. Well, in the first place, one is retroactive and hangs as a sword over the head of the shipper all the time, and, secondly, it is pretty largely hypothetical now because it is forbidden by law to rebate.

Q. Well, what is the difference between this rebate and [fol. 1410] this discount in advance for signing up the contract?

A. The carrier never has any of the shipper's money under the existing contract method. He did have the shipper's money, in fact, under the other one, because he owed the shipper a refund or a rebate that the shipper could lose by breaching the contract.

Q. You mean, under the newly devised system the shipper has the use of that money over the year, that 20 per cent extra charge?

A. Well, they are not quite the same. He can't lose it.

Q. He can lose it by patronizing another carrier?

A. The only amount he could lose would be an amount of liquidated damages. He can't lose any part of a refund due him, because there is no refund due him.

Q. Well, you are familiar with the method of the Conferences as in Docket 648, the Pacific Coast/European Conference, and so forth, where they had the retroactive penalty where, if he violated the contract by patronizing an independent, he paid the 20 per cent back from the beginning of the contract; you are familiar with that, aren't you?

A. The Maritime Commission applied the proper remedy there, as I would see it, by requiring the Conference to abandon the system.

Q. It is a fact, is it not, or are you familiar with it, that as a substitute for that retroactive penalty this Conference and others have adopted the provision that if [fol. 1411] the shipper patronizes a non-Conference carrier, he shall pay twice the amount of freight which he would have paid the Conference for the carriage of the goods?

A. I understand that to be the case, but that is applicable only to the shipment in question, is it not, the shipment that is involved in the breach, isn't that correct?

Q. Yes, with the cancellation of the contract.

A. So there is nothing retroactive about it beyond the particular shipment.

Q. Well, you are aware, are you not, Professor, that some shipments, the freight involved runs into many thousands, and sometimes hundreds of thousands of dollars?

A. Yes.

Q. You are aware of that, are you not?

A. Yes—I think the last figure is a little high when you get in the charter trade, but in principle, yes, it amounts to a great deal of money, I agree to that.

Q. And twice the amount of the freight would amount to a great deal of money?

A. Yes, indeed.

Q. Now, in answer to the last question by Mr. McDowell as to the possible consequences of the independent operator being put out of business, completely put out of business, as I recall it, you said that you could not assume that the Conference deliberately aimed at putting him out [fol. 1412] of business, but that his going out was some kind of an economic consequence; is that correct?

A. I think that is substantially my opinion, yes.

Q. Well, now, would it change your opinion if it were brought to your attention that within the very walls, this Conference has announced that they are determined "to put that so-and-so Isbrandtsen out of business"?

A. Well, I——

Mr. Hupper: You mean the walls of this room?

Mr. O'Connor: If you take in the corridor outside. I hope you don't ask me who told it to me.

The Witness: If they said that, I think it is rather intemperate, to say the least.

By Mr. O'Connor:

Q. Would that change your opinion?

A. If there were within the law—I don't believe it is related to my opinion in this at all.

Q. You are able to give an opinion with that assumption?

A. But that does not distinguish between vindictiveness you might find in one situation and a desire to stabilize and carry on the trade in another. In that second case,

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the loss of independence is incidental, with no personal animosity.

Q. I am asking you to assume animosity, which you elimi-
[fol. 1413] nated in the first place.

A. I would rather not assume it.

Mr. Hupper: I object.

The Witness: I would rather not assume animosity in giving my answer.

Mr. O'Connor: That is all, Professor.

Mr. McGovern: Will you tolerate one additional question, Mr. Examiner?

Examiner Robinson: Go ahead.

By Mr. McGovern:

Q. Mr. Henry, I thought I caught the implication in the answers you made to Mr. McDowell that this presently existing, or presently proposed, contract-non-contract system had been before the Alexander Committee for consideration. Did you mean to leave that implication?

A. That the Conference system had been before the Alexander Committee?

Q. That's right; that this contract-non-contract exclusive patronage rate system had been before the Alexander Committee for consideration?

Mr. Hupper: You don't mean this particular contract here?

Mr. McGovern: Not this particular exclusive contract, no.

The Witness: I would say the contract system was inves-
[fol. 1414] tigated as part of the Alexander Committee's investigation, and was reported in Volume 4, and discussed by the Committee.

By Mr. McGovern:

Q. Well, it is a fact, is it not, Mr. Henry, that the contracts that were presently before the Alexander Committee in both testimony and in the exhibits were actually contracts of carriage made for a period of one year in which the shipper was given an absolute guarantee of rate protection for that period, and he was assured that the Conference or the carrier would carry his goods for the period?

A. I don't know that that was true. I am perfectly willing to agree, but I don't know that that was in the Alexander Report. I can't recite it. I have read it a couple of times, but——

Q. You have, then, no recollection as to whether or not that is the fact?

A. I have no recollection, I merely established the point that the contract system was known as far back as that, and beyond that, and that they had discussed it in the Alexander Report.

Q. Yes, but I am concerned, sir, that we not be confused on this record as to what contract system we are talking about. The issue here, the contract-non-contract exclusive patronage rate system, I am suggesting to you that there isn't a word anywhere in the Alexander Report with refer- [fol. 1415] ence to this type of contract system.

A. I cannot say that is true or untrue. I do not know. I merely suggested that the contract system, with or without the variations spoken of, was known to exist long ago and long before the Alexander Committee.

Q. And the contracts you are talking about are contracts that contained the deferred rebate?

A. Those—well, I have mentioned them. I was talking about contracts in general and the system of making exclusive contracts within a Conference agreement is not new. It is 40 or 50 or 60 years old.

Q. Those contracts, however, I asked you whether, as a matter of fact, those contracts were not actually contracts of carriage?

A. That I am not sure of.

Mr. McGovern: That is all.

By Mr. Galland:

Q. Mr. Henry, I would like to see if I can't refresh your recollection as to what the Alexander Committee had in mind by deferred rebates.

Does emphasis on the word "deferred" suggest to you any distinction to you between the type of arrangement which we have here and the system which the Alexander Committee was considering?

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[fol. 1416] A. Well it is my understanding that in the type of contract that involved the deferred rebate, the steamship line withheld a certain percentage or set in escrow a certain percentage of the rate for a period of three, six, nine months, or a year, and upon completion of satisfactory patronage on the part of the shipper, they would return to the shipper that percentage of the rates paid.

Q. Do you recall that under the deferred rebate system the rebate, payment of the rebate, was deferred beyond the end of the contract period and was paid only if following the expiration of the contract period, and at the time when payment became due in the next period, the shipper was still bound for a new period to the carrier; is that your understanding?

A. Well, I think that was true in some cases. I haven't detailed knowledge of that. My knowledge goes only as far as the fact that the rebate was deferred and it sat over the shipper as a somewhat compelling factor in case he saw fit to breach the contract. The time of withholding varied, I think, with the Conference, and probably other details varied with the Conference. They were not uniform, as I understand it, at all, though I can cite no specific Conferences and their differences.

Mr. Galland: Thank you.

Examiner Robinson: Are there any further questions?

[fol. 1417] Mr. McDowell: I would like to ask one additional question, Mr. Examiner.

By Mr. McDowell:

Q. You testified some time ago—strike that, will you please?

In your earlier testimony you indicated some doubt as to the ability of the Maritime Commission to protect lines from rate reductions, in response to some questions from me, and subsequently Mr. Galland informed you that recently the Maritime Commission had secured an injunction to prevent a substantial reduction in the Havana trade, and you stated you had not known of that.

Now——

Mr. Galland: I think he stated he read it in the newspapers.

The Witness: I saw some reference to it, but I am not acquainted with the facts. It is safe to say I know nothing about it.

By Mr. McDowell:

Q. Had you known of that, had you been familiar with that exercise of regulatory power and demonstration of ability by the Maritime Commission to protect the shipping lines from substantial reductions in rates, would that have altered your opinion in response to my earlier questions?

A. I would doubt it. Sometimes it is a long step between [fol. 1418] an injunction and final disposition. I don't believe it would have changed my conception of things as I have given them today.

Mr. McDowell: Mr. Examiner, I move to strike and expunge the entire testimony of this witness from the record on the ground that he is brought in here to testify on the basis of theoretical considerations which are rooted and grounded in reconceptions and in conclusions drawn from the history prior to the Alexander Committee Report, notwithstanding the fact that subsequent regulation has been imposed upon the water system.

Further, it appears that he is completely irresponsible with respect to the issues in this proceeding, in that he undertakes to testify with respect to what might happen to a shipping line here in a case which involves the ability of an independent to engage in trade without knowing anything about the conditions involved and the particular facts of the trade in which any justification might be found for the system other than his theoretical preconceptions based on the early history.

He has further demonstrated a lack of familiarity with more recent decisions and developments in the field of regulation and control, and for these reasons I move that his entire testimony be stricken and expunged.

Mr. Galland: This is the first time I knew it was a ground [fol. 1419] for striking——

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Examiner Robinson: Motion denied.

Mr. Hupper: I would like to make one comment, may I, in regard to that?

Here we are in a hearing, taking a lot of time, my good friend, Mr. McDowell, has enjoyed very considerable informality in discussing things theoretically, and he doesn't draw from the witness what he would like to have, and therefore, he moves to strike out the whole business.

Examiner Robinson: The motion is denied.

Mr. McDowell: Well——

Examiner Robinson: We don't have to go any further. I have already denied it. We have it on the record.

Go ahead, Mr. McGovern.

Mr. McGovern: May I just ask one question?

Mr. McDowell: I would like, before we leave the record in that state, Mr. Examiner, to point out the objection has been made prior to the time I commenced the cross-examination of this witness, and you had deferred ruling on it, that I attempted in examination of this witness to develop whether or not there was any basis in fact for the conclusions which he had drawn and put forward here.

Examiner Robinson: I think the record is clear on that.

Mr. McDowell: And I believe in the light of the answers [fol. 1420] and the responses which he has given, that the motion is well taken.

Examiner Robinson: The motion is denied.

By Mr. McGovern:

Q. In response to a question from Mr. O'Connor, Professor Henry, you emphasized that the principal distinction in your mind between the deferred rebate system and the exclusive patronage contract system was the fact that the deferred rebate system was retroactive in its operation.

Now, in your judgment, would it be fair to characterize that distinction by saying that whereas the deferred rebate system dealt with deferred rebates, the exclusive patronage system deals with preferred rebates?

A. I shouldn't think you could use the word "rebate" at all. "Rebate"—I should think—means return, and as

I, from my knowledge of this, there is no question of returning is there?

Mr. McGovern: That is all.

By Mr. O'Connor:

Q. Well, isn't it the same situation, Professor, that if you borrow a hundred dollars at the bank, some banks at the end of the year would charge you $6 for the interest, other banks, instead of giving you the hundred dollars take the $6 out and hand you $94; isn't that a parallel example?

A. No, I don't think so.

[fol. 1421] Q. Yes? Why?

A. Well, I just don't think they are comparable at all.

Q. Well, would you use the word "discount" at all in connection with this new exclusive patronage contract system?

A. Well, there is a principle of discount in it—not necessarily rebating.

Q. Isn't the net result in dollars and cents in the example I gave you, the same as on the ships?

A. No, I don't think so.

Q. Where, instead of paying the $24 under the system, he winds up only paying $20; isn't the net result the same?

A. I don't think so. At no point does the carrier have money he is going to return to the shipper is he satisfactorily completes the contract. The carrier never is in that position.

Q. I am asking about the net result in dollars and cents to the shipper; what winds up in his bank account. Isn't it $20 in either case?

A. Might not be.

Q. Well, what difference would it be, and how would that happen?

Mr. Galland: Mr. Examiner, let's not get arithmetic from the witness.

Mr. O'Connor: I am entitled to find out——

Examiner Robinson: All right; go ahead.

[fol. 1422] The Witness: In that event the rebate which would be determinable would be in the hands of the carrier, and in the other case the carrier would never have it.

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By Mr. O'Connor:

Q. You have said that several times, Professor. I am asking you the net result to the shipper; how much in dollars and cents he has?

A. In the event of a breach of the contract, in the one instance the carrier already has the money which he is not going to return; in othe other case he has no such funds.

Examiner Robinson: Isn't it entirely possible he could use that money, which he never had, to pay that difference in the meantime for something that came up in his business, where, if you put it off for six or eight months, or eighteen months, that situation might not come up, he might not have any use for the money if he got it back is that right?

The Witness: That is correct.

Mr. O'Connor: I brought that out, that he was at least hindered from having the use of that extra money, but let me ask this again:

By Mr. O'Connor:

Q. I am talking about the net result to the shipper. Now, under the exclusive patronage system, if the shipper who pays the $20 in the first instance violates the contract, he is [fol. 1423] subject to paying the $4 extra, isn't he?

A. Thereafter?

Q. Yes.

A. Yes.

Q. Well, I would like you, as an economist, as a life-time professor, to state what the net economic difference in those two system- is to the shipper?

A. Maybe I could put it this way: that it seems to me there is quite a difference paying as you go and being even with the carrier, rather than to pay more than you ultimately hope to pay and give the carrier custody of the funds, hoping he is going to return them. That constitutes quite a sword, I should think, in the hands of the carrier, retaining your money.

Q. Are you adding in there the possibility of the financial responsibility of the carrier?

A. That would be one factor, one of many. It is the fact and the feeling, or the idea, if you care to express it, that the carrier has your money and you have to be good or you are not going to get it back.

Q. Did you ever teach mathematics, professor?

A. No.

Mr. O'Connor: That is all.

Examiner Robinson: Are there any further questions?

Mr. Hupper: I have another witness, if you want to [fol. 1424] go on.

Examiner Robinson: Let me ask you an innocuous question. You might not want to answer it.

Assuming the rate wars we have discussed here, are you in a position to know, either from experience or from what you have read or talked with anybody, whether or not a rate war ever produces any additional cargo?

The Witness: Whether it does?

Examiner Robinson: Yes.

The Witness: I have no particular knowledge, but it might, I should say, produce cargo that was about to be shipped, and they might, during a rate war in an individual instance, or a number of them, hurry up shipments, see to it that they could take advantage of it.

I think in the broader area, it is quite the opposite as far as the exporter is concerned—particularly, he isn't going to be able to sell.

Examiner Robinson: That is the point I am trying to get at. He is not going to generate any more trade?

The Witness: I don't think in the aggregate he would. I think less in the aggregate, but there are bound to be exceptions to it.

[fol. 1425] Q. You have been asked about some experiences or happenings in the operations of conferences. Are you familiar with the proceeding in Maritime Commission Docket 512, where the conferences reduced the rate on flour from 40 cents to 10 cents?

A. No.

Q. Isn't it conceivable cargo could move at $5 a ton that couldn't possibly be moved at $20 a ton and there would be more cargo moving at $5 than at $20?

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A. Well, that would be true of some products, but how do you know, as far as the buyer is concerned, what that $5 is going to be—is it going to drop to 3 or is it going up to 12—the seller isn't going to be able to convince the buyer, as I would see it, that he should buy normally in a period of widely fluctuating rates.

Q. Well, wouldn't he buy abnormally and buy in larger quantities at $5 than he could possibly ever buy at $20?

A. He would for that period of time, perhaps.

Q. But that does generate some trade, additional trade?

A. There would be some additional freight but I think no addition to the total.

Q. I don't get your reasoning there.

A. I think it would spur an individual of buying, the occasional buyer, or shall we say it would add some pennies from individuals, but the general level which must be produced by the aggregate purchasers and sales throughout [fol. 1426] the country, or throughout the world would go downward. I think it would go downward from the very last of confidence in the rate structure.

Q. Then you are considering the whole world in answering the question, and not any particular trade that, for example, if there was a rate war in South Africa, in the South African trade, and that the South African buyers would buy more in this country although they would buy less where the $20 rate would still be applicable?

A. Well, that is possible. I would hesitate to say definitely on that, but it seems to me that if any wide range of ports on open end of a trade route are involved, that it still would likely to be true that in terms of instability there would be a falling off of business if it were prolonged for any length of time. There might be some who would take advantage of an immediate lowering of the rate, but I think over a period of time there would be uncertainty, and that would contribute to an interference with foreign trade and consequent reduction in total of purchases and sales.

Examiner Robinson: Are there any further questions?

Mr. McGovern: Yes.

By Mr. McGovern:

Q. In your judgment, is there something peculiar about foreign trade that indicates lower rates wouldn't sell more goods than higher?

[fol. 1427] No, if they can be depended upon.

Q. For example, take an illustration out of your domestic experience. It is a fact, isn't it, that there is much more aluminum consumed at 11 cents a pound than was ever consumed at 20 cents a pound, the rate that Alcoa previously maintained—that is just a natural economic fact, isn't it?

A. Yes, because the cost of production has been lowered.

Q. It isn't a course of production I am talking about, but the consumer of aluminum who has got $1 to spend, he can now buy 10 pounds of aluminum where, prior to Alcoa's dissipation of monopoly he has bought only 5 pounds. Now, isn't that a fact?

A. Yes.

Q. Well, why doesn't it operate equally in the foreign trade—the foreign buyer, if he can get a cheaper rate reflected by the cheaper transportation costs is obviously in a position to buy more, isn't he?

A. The comparison between that and the aluminum company, I don't think is a reasonable one, because the price of aluminum is something that represents, I should say, advancement in the scientific approach to smelting, and refining, and rolling the aluminum. Here we have no corresponding reduction in the steamship operating costs.

Q. I am simply asking, Professor Henry, whether or not the consumer with the dollars, whether he is going to buy [fol. 1428] aluminum in America or he is going to buy some of Sten-Hall's exports, whether he is not in a position to buy more if the price to him is less?

A. I think that is generally obvious.

Q. That is obvious, isn't it?

A. I think so.

By Mr. O'Connor:

Q. Now, Professor, are you aware of the fact that in transportation the cost of transportation of some products

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is so high compared to the value that interferes with their being transported?

A. I think that has always been true.

Q. If you take products like scrap iron or fertilizer or other things that do not ordinarily warrant paying the high transportation costs for those things, wouldn't more of them be sold if there was a rate war and the transportation costs came way down on them?

A. Well, I think there would, but ultimately don't see how you are going to gain. The service isn't going to be there, and there is a certain amount of it produced for sale, perhaps, it would be carried maybe a little more feverishly, and that is the end of that.

Q. Isn't it possible there are some goods in this country that never would be transported abroad because of the cost of transportation compared with their value?

[fols. 1429-1430] A. Yes, I should say so.

Q. So that if a rate war came along, some of those goods might go abroad on account of the very low freight rates?

A. They might.

By Mr. Malatzky:

Q. And that would be a total addition of the overall freight of the country?

A. That would be, I should say, on how long this endured. If you are speaking of low freight rates, of course, this stimulates an exchange of goods. If you are speaking of rate wars in which there is no confidence on the stability of the rates, that is quite another thing.

Examiner Robinson: That is what my question was directed to, the rate war proposition.

The Witness: If there is a rate war, of course, they are going to sell if they can, but if they haven't confidence, in whether the rates are going down or up, they are not so sure to do forwarded buying.

[fol. 1431] By Mr. Malatzky:

Q. But they will do spot buying?

A. Yes.

Q. And that spot buying may result in an overall increase of trade in those commodities?

A. It might.

Q. That would not take place if the rate were kept at the higher level?

A. It might. I am not prepared to say.

Q. Have you any idea of the percentage in—somewhere you may have gotten some idea in respect of the percentage of forward buying as against spot buying?

A. Oh, I do not know.

Q. You do not know if forward buying is an important factor in any particular trade,—in this particular trade in or in total trade as against spot buying?

A. I have no percentages to offer. In everything I read on the subject, there is reference to the value and importance of forward buying and the relationship of forward buying to stability of rates.

Q. Have you any idea of the total volume of business which might be done on a c.i.f. basis, or c.n.f. basis as against f.a.s.?

A. No, I don't know the percentages.

Examiner Robinson: Is there anything else?

[fols. 1432-1434] Mr. Malatzky: I would like to go on, but I am hungry and tired.

Examiner Robinson: Well, we thank you very much and we will reconvene at 10 o'clock.

(Whereupon, at 6:30 p. m., the hearing in the above-entitled matter was adjourned, to reconvene at 10:00 a. m., May 25, 1949, at this place.)

[fol. 1435] TRANSCRIPT OF HEARING

Met, pursuant to adjournment, at 10:00 a. m.—May 25, 1949.

[fol. 1436] PROCEEDINGS

Examiner Robinson: If you gentlemen are ready, we can start.

(Discussion off the record.)

Mr. Hupper: Mr. Andrews here is for the closing of his cross-examination.

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CHARLES R. ANDREWS recalled, was previously sworn, and testified as follows:

Cross-examination.

By Mr. McGovern:

Q. Mr. Andrews, toward the conclusion of your testimony yesterday, you may recall I pointed out to you that on the face of your minutes, there was no information for the Commission or anyone else as to what the vote was on those rate adjustments that were declined, and what reasons were assigned for the declinations, and I asked you if you had not testified that it had been your policy to attempt to keep the Commission informed as to the activities of the conference. You may recall that counsel objected on the ground you had not testified to that effect.

Now, I direct your attention to your testimony at page 564, which I am sure you will recall, and to the following question:

"Question: You keep the Commission fully informed as to what the conference is doing?

[fol. 1437] "Answer: That is correct.

"Question: And I take it that when questions come up in which you think the Commission may be or ought to be interested you make it a point to be in touch with this, that, or the other person in the Bureau of Regulations?

"Answer: I do."

Do you recall your testimony? A. I do.

Q. Now, I take it that it is still your view, is it, that the Commission would not be interested in knowing which lines in the conference were responsible for the declining of a rate adjustment, and what were the reasons ascribed for the declination?

A. I haven't received any such requests from the Commission.

Q. And you feel that there is no obligation on your part to inform the Commission of those activities?

A. Well, if the Commission asks me, I would be glad to tell them. But we have kept the Commission posted on the requests which have been before the conference lines and declined.

Q. But on the face of the minutes, I take it you are in agreement that no one examining the minutes could ascertain the reasons for a particular decline, or the lines involved that were responsible for it?

A. We don't furnish the names of the shippers in the minutes.

Q. Now, you testified on your direct examination, Mr. [fol. 1438] Andrews, that prior to your monthly or your periodic meetings, requested rate adjustments were passed upon by a rate committee?

A. That is correct.

Q. And I would direct your attention to the minutes of the meeting for September 12, 1946, if you have them available. The minutes of the meeting of September 12th, lists the rate committee of that time, Mr. Andrews, does it not?

A. Yes, it does, on page 4 of the minutes.

Q. Those minutes show, do they not, that the rate committee was then composed of Mr. Van Ryn, representing the Holland-American?

A. That is correct.

Q. And Mr. Zagat representing the Belgian?

A. Correct.

Q. Mr. Roland, representing the County Line?

A. Correct.

Q. A. L. Olesen representing the Cosmopolitan Line?

A. That is correct.

Q. S. C. Kohl, representing the United States?

A. Yes, sir.

Q. And W. B. Terhune representing the Black Diamond?

A. That is correct.

Q. It would appear then, Mr. Andrews, would it not, that as of September 12, 1946, the rate committee, composed of six members, had four representatives of the for- [fol. 1439] eign lines, and two representatives of the American flag lines?

A. It was a balanced committee consisting of two American flag lines, a line operating principally to Holland, a line operating principally to Belgium, and a line operating to Belgium and Holland, and one Canadian line operating from Canadian ports.

Q. Yes, but the result of that arrangement was that the committee was composed of -our representatives of for-

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eign flag carriers and two representatives of United States carriers?

A. It would work out that way.

Q. Mr. Andrews, in establishing your contracts, non-contract rate system, it is my understanding it was proposed to continue in effect after November 1st, the tariff that had been largely in existence prior to that date, but that after November 1st the rates in the present existing tariff would then become the contract rates, is that correct?

A. Yes. We were establishing as a contract basis the tariff rates which had been in effect for some time.

Q. How did you calculate what the non-contract rates would be? Were they arranged on a basis pretty much——

A. (Interrupting) We followed the same pre-war practice that had been in effect in most of the trans-Atlantic trades, of substantially 20 per cent over the contract basis, rounding the figures out to the nearest nickel.

Q. In other words, in general terms, the non-contract [fol. 1440] rates were going to be fixed on a differential of approximately 20 percent above the contract level?

A. That has been the basis pre-war, and the basis in effect to all of the European freight where there is a contract system.

Q. Well, now, is it your own view that the rates which are fixed on a differential basis, either above or below other rates, are reasonable?

A. We didn't fix them on a, so to speak, differential basis. We fixed them at specific rates in the tariff.

Q. I understand that, but I also understand that generally the non-contract rates were fixed at a differential of approximately 20 percent above the contract rates?

A. That is correct.

Q. And I am asking you whether in your judgment the fixing of any rate scale at any time on a differential basis is a reasonable method of making rates?

A. I don't think the making of rates by differential is a proper basis, for that is an arbitrary basis.

Q. I direct your attention to the meeting of October 10, 1946, and more specifically directing your attention to your item No. 2247, that item reflects, does it not, that after discussion the chairman was directed to confer with ship-

pers of heavy grain in bulk to Antwerp, Rotterdam, and Amsterdam, to ascertain whether some arrangement was possible, whereby the conference lines would first be of- [fol. 1441] fered all shipments on a liner basis, in return for reduced rates? Is that a fair summary?

[fol. 1442] A. That is Minute 2247(C) of the meeting held on October 10, 1946.

Q. Now, then, coming down to the minute- for November 14, 1946, you have a minute that refers back to this grain arrangement, does it not?

A. That is correct.

Q. And which reflects that an agreement was actually made with the Belgium Economic Mission to carry grain at 52½ cents per 100 pounds?

A. From United States and Canadian North Atlantic ports, excepting Albany.

Q. And the minute also reflects, does it not, Mr. Andrews, that the member lines were to report carryings at above rates for filing periods in Docket 128?

A. That is correct.

Q. Current tariff rates remain unchanged?

A. Right.

Q. Would you explain precisely what that arrangement amounted to?

A. What do you mean by "that arrangement"?

Q. Well, I note the notation at the end of the minute, "The current tariff rates will remain unchanged." Precisely how did you propose to have the member lines carry these grain shipments at the reduced rate?

A. Well, as a matter of fact, this minute is not entirely [fol. 1443] correct, as I reflect back on it now, because under Docket 128 you are not obligated to file any rates without mark account.

Q. I am not asking you at the moment what Docket 128 required, but I am asking you what these minutes mean?

A. It means just what it says, Mr. McGovern, that we had reached an understanding with the Belgium Economic Mission effective October 30, 1946 through December 31, 1946, through Antwerp for shipments of heavy grain in bulk, the following rates:

From Albany, New York, 55 cents per 100 pounds, and

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from other United States and Canadian ports, 52½ cents per 100 pounds.

Q. At that time, is it not a fact the existing tariff rate was 65 cents per 100 pounds?

A. It might have been. I couldn't tell *tell* without checking.

Q. You might refer to your own item No. 2270. I don't know just which minute that is in, but you can go by your numbers there.

A. 2270, right.

Q. Does that not reflect that the existing rate was 65 cents per 100 pounds?

A. It would so indicate.

Q. Do you know of your own knowledge whether or not [fol. 1444] the Conference Lines ever carried any grain in bulk at 65 cents?

A. Not without looking it up.

Q. Now, coming back to the minute of November 14, 1946, I take it that that current tariff rate of 65 cents per 100 pounds was not to be changed.

A. The minutes so state.

Q. In other words, there would be no correction to be filed as to that rate?

A. As to those two rates.

Q. As to those two rates. And yet, the member lines were to undertake for the Belgium Economic Mission to carry the grain at 52½ cents?

A. That is correct.

Q. Now, how would that be reflected in your filings with the Commission?

A. Well, as I indicated there, the members were required to report such carrying to the Commission although technically they are not required to do so.

Q. Well, would that filing with the Commission indicate that that was a contract rate, or, in your judgment, was it not a contract rate?

A. We don't contract grain in bulk at any time. It is excepted from the contract conditions, and so stated in the tariff, even the present tariff.

Q. Under the terms of this minute apparently the grain [fol. 1445] was to be accepted and carried first, and the rate was to be filed subsequently, is that right?

A. No. The indication here is that we worked our an agreement, or an understanding, put it that way, with the Belgium Economic Mission, and the rates were so specified in their minutes.

Q. I appreciate that, Mr. Andrews, but I am coming particularly to the phrase, "member lines to report carryings at above rates for filing." Does that mean the member lines would report the rates subsequent to the carrying of the grain?

A. Under Docket 128 they would wait 30 days to report reduced rates.

Q. That was the arrangement you had in the minutes?

A. As a matter of fact, I just testified that technically they are not required under Docket 128 to file rates without mark account.

Q. I understand that quite clearly, but nontheless, the minute does reflect the member lines were to report their carryings at the above rates for filing, and I am merely trying to find out what, in your judgment, that particular edict to the membership meant?

Examiner Robinson: Doesn't that mean they report to the Conference, not the Commission?

The Witness: It could have been, but the lines could, of [fol. 1446] course, have reported direct to the Commission. My purpose in putting it in the minutes at that time was for the purpose of keeping the Commission advised of these rates. They get a copy of the minutes, so they know what the rates are.

By Mr. McGovern:

Q. Does the phrase, "for filing," as the Examiner just inquired—does that mean filing with the Conference or filing with the Commission?

A. I would have to check that up. I would imagine that they would file it with me.

Q. Then in that case the additional phrase, "periods in Docket 128," would be meaningless.

A. I said before, I thought that was incorrectly worded.

Q. So at the moment you are not actually, in your present recollection, able to testify whether this arrangement was to file with the Conference or with the Commission?

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A. I think I could check that up very easily, Mr. McGovern, by consulting my files, and give you all the information you want on it.

Q. Possibly you could do that at some time during the morning, Mr. Andrews. I would appreciate it if you could.

A. Well, I will try, if I am not here all day.

Q. Now, Mr. Andrews, the agreement generally that was made between the member lines of the Conference and the [fol. 1447] Belgium Economic Mission to carry the grain at $52\frac{1}{2}$ cents, which you have indicated was $12\frac{1}{2}$ cents under the existing rate of 65 cents per 100 pounds, was that agreement filed under Section 15 with the Commission for approval?

A. It was not.

Q. Doesn't Section 15 requires that agreements between carriers for special rates shall be filed and approved by the Commission?

Mr. Hupper: I object to that question—what Section 15 means. He is not a lawyer.

Mr. McGovern: He is not a lawyer, but he testified as Chairman of the Conference.

Examiner Robinson: I think he is competent to say whether he thinks it is something to do under the law. He is the man that is supposed to handle that business.

Mr. Hupper: It is a matter of making rates to the shippers. That is all.

Examiner Robinson: I am not saying he was required, but it is his position to take the step, one way or the other, and I think he is qualified to answer.

By Mr. McGovern:

Q. What is your view?

A. May I have the question over again?

Q. Yes. I asked whether or not, in your judgment, Section 15 doesn't require that agreements between carriers [fol. 1448] offering or granting to shippers special rates must be filed and approved by the Maritime Commission?

A. That is not my understanding. It is merely a rate practice under the basic agreement which has been approved by the Commission. We don't file our rates with the Commission for approval.

Q. I presume you are referring to 4490?

A. That is correct.

Q. Your basic agreement doesn't reflect, does it, any arrangement of this nature about the Belgium Economic Mission rate not being available to anyone else?

A. It doesn't restrict it to Belgium. It refers to all rates, contract or otherwise.

Q. And you told me you did not regard this a contract, non-contract arrangement?

A. It was not a contract, non-contract arrangement.

Q. I take it the lower rate was granted in consideration of the Belgium Economic Mission confining its shipments exclusively to Conference Lines?

A. It was the understanding, if my recollection is correct, to ship—and it may have been not all shipments, but a specific tonnage—with the Conference Lines at a rate.

Q. Now, coming along to the minutes for June 1947, Mr. Andrews, we find, do we not, a further reference——

[fol. 1449] Mr. Hupper: Did you say June 19th?

Mr. McGovern: June 1947. I don't recall the day of the month, Mr. Hupper.

Mr. O'Connor: June 12th.

By Mr. McGovern:

Q. That minute contains, does it not, Mr. Andrews, in Item No. 2247 (f), a further reference to this bulk grain arrangement with the Belgium Economic Mission?

A. It refers to the matter of rates on grain in bulk with the Belgium Economic Mission, both at Washington, D. C. and Montreal.

Q. And the minute recites as follows:

"Chairman directed to confer with the Mission on proposition of adopting on the 15th of each month for the subsequent month bulk grain rates to Belgium at fixed differential of 5 cents per 100 pounds for liners over tramps for that month, the rate agreed remaining firm regardless of any fluctuation in tramp rates."

A. That is correct.

Q. Now, that arrangement, or tendered arrangement on the part of the Conference contemplated, did it not, Mr.

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Andrews, that the rates that would be charged monthly to the Belgium Economic Mission would be fixed on a sheer differential of five cents per one hundred pounds over the [fol. 1450] going tramp rate for that month?

A. That is correct.

Q. I believe you indicated earlier that in your judgment the fixing of rates on the basis of fixed differential over other rates was not a reasonable rate-making procedure?

A. I am still of that opinion, but this was a request coming from shippers of the commodity to fix a differential like that.

Q. And in your judgment, if the shipper requested fixed differential, does that convert an otherwise unreasonable rate-making structure into a reasonable rate-making structure?

A. On the general rate structure, I think it is unreasonable.

Mr. Hupper: Talking about tramp rates.

Mr. McGovern: I am talking about the minutes.

Mr. Hupper: But your question said "tramp rates." You referred to the minutes. I haven't it before me.

Mr. McGovern: Yes, the tramp rate.

Mr. Hupper: That is not the common carrier rate. Five per cent over the tramp rate. The common carrier rate relation to the tramp rate.

By Mr. McGovern:

Q. Now, as a result of this tendered agreement here, Mr. [fol. 1451] Andrews, it is quite possible, is it not, that had there been any appreciable drop at all in tramp rates, that that five cents differential for berth service over the tramp rate would not have been compensatory to the Conference Lines?

Mr. Galland: Will you read that question?

(The pending question was read by reporter.)

A. That I couldn't answer.

[fol. 1452] By Mr. McGovern:

Q. Well, in any case, in deciding to tender this arrangement to the Belgian Economic Mission, you obviously had

made no provisions to protect yourselves against the possibility that you might be compelled to carry this grain at a loss?

A. Not necessarily.

Q. The agreement ran, I take it, was supposed to run for several months?

A. That is right. This arrangement never came into effect.

Q. I understand. I am talking about a tendered arrangement.

A. It is something proposed by the shippers of that grain, and the lines, if my recollection is correct, wanted to give it a fair trial to see how it worked out. But it never came into effect so far as United States ports are concerned.

Q. But since you were proposing——

Mr. Galland: Just a minute. You say, "If the arrangement never went into effect." Mr. Examiner, it seems to me this line of testimony is irrelevant.

Examiner Robinson: Of course, I think it goes to the weight of it, but I imagine he is trying to show some sort of pattern.

Mr. McGovern: Yes. I don't think it goes to the weight at all. If this conference undertook to work out this kind of an arrangement, that is just as relevant as anything else.

[fol. 1453] By Mr. McGovern:

Q. What I am trying to ascertain, Mr. Andrews, is, assuming this is merely a tendered arrangement, I am suggesting that the conference was tendering to the economic mission for a limited period—what was the period you had in mind, 6 months?

A. I can't recall at the moment. It was going to be on a sort of straight month-to-month basis.

Q. The preceding arrangement though had been for a 6-month period, had it not?

A. I think that other arrangement you referred to in the previous meeting was for a definite period.

Q. You see, the earlier agreement was negotiated in the

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November 14, 1946 meeting, and I assume that ran until June of 1947, since that next minutes is in June of 1947.

A. That ran, as I previously testified, effective October 30, 1946 through December 31, 1946.

Q. But the Belgian Economic Mission did not serve its notice of withdrawal of that grain agreement until June of 1947. That is reflected, is it not, in the June meeting?

A. They couldn't have served after that period because the period expired December 31, 1946.

Q. Well, then, what does the June, 1947 minute mean?

A. June, 1947 was, as I previously testified, an attempt to make some arrangement for the shipment of bulk grain to Belgium, on the proposition of adopting on the 15th [fol. 1454] of each month for the subsequent month bulk grains to Belgium at a fixed differential of 5 cents a hundred pounds for liners over the trampings for that month.

Q. Yes. I am referring to the earlier part of the minutes which reflect the Belgium Economic Mission served notice of withdrawing from the grain agreement.

A. Well, that I would have to get out. There may have been a subsequent agreement on grain subsequent to November 1946.

Q. Yes. At least I think a careful examination of your minutes will reflect between November 14, 1946, when the minute reflects the agreement was made——

A. This might have been handled between meetings.

Q. It might have been. I am suggesting between those two minutes, between November 14, 1946 and June, 1947, there is no other indication on the face of the minutes as to any different arrangement with the Belgium Economic Mission?

A. I think that is correct.

Q. Now, coming back to the actual tendered arrangement, I am asking again, whether, as a matter of fact, it was not possible that under that arrangement the conferences will be carrying this grain in liner service at a loss to themselves?

A. I previously answered that question I don't know.

Q. You don't know whether it would be possible or not?

A. To carry at a rate not compensatory to the lines?

[fol. 1455] Q. Yes. I am not asking——

A. I don't have the figures of the operating costs, Mr. McGovern, so I couldn't tell you.

Q. Can you say from your experience whether a 5-cent rate per 100 pounds above the going tramp rates would normally be compensatory for berth service?

A. At that time it may have been, but if the lines want to participate in grain, which would normally move on tramps or charters, they have to have their rates somewhere in line with the tramp rates, otherwise they don't participate, and they may need a substantial quantity of the grain for the operation of those ships.

Q. Let me put it this way——

A. In other words, it may be distress cargo so far as that particular ship is concerned.

Q. Let me put it this way. Under this tendered arrangement, the conference members obtained no assurance, did they, that they would not be carrying this grain at a loss?

A. Well, as a matter of fact, the arrangement never went into effect.

Q. I am asking you as to the tendered arrangement.

A. It was an arrangement suggested by the shippers of grain, and if my recollection is correct, the lines were willing to meet the wishes of the shippers and try out the arrangement. But it is also my recollection that it never went into effect.

[fol. 1456] Q. I understand you have testified now several times it did not go into effect. But I am asking with regard to the tendered arrangement. There is no argument that the conference tendered this arrangement to the Belgium Economic Mission?

A. Thy were willing to go along with the wishes of the Belgian Economic Mission on the grain and try it out.

Q. I am asking whether or not from the standpoint of that willingness alone, the conference lines were not willing to forego protection against carrying the grain at a loss.

Mr. Hupper: I submit this line has been pursued pretty far. It was a tendered arrangement. It never did go into effect, and who could tell whether particular lots of cargo were carried at a loss or not? It is highly speculative.

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It depends on whether you have a full ship or a part-full ship. That is a situation that simply cannot be explored.

Examiner Robinson: I will permit it if he can answer.

Mr. McGovern: Please read the question.

(The reporter read the question.)

A. I don't know they were willing to forego that, no.

By Mr. McGovern:

Q. Would it be your view, Mr. Andrews, that this tendered arrangement on the part of the carriers represented an attempt on their part to fix those rates on bulk grain for berth service on a basis that would represent pretty much all the traffic would bear?

[fol. 1457] A. I don't know whether it would represent that feature. It was, as I previously testified, it was a proposition offered by the shippers.

Q. I understand it was a proposition offered by the shippers, but your own minutes reflect this conference repeatedly declines propositions offered by shippers. Now, why did you accept this particular one?

Examiner Robinson: Maybe I can clear it up or make it worse.

Mr. Andrews, do you have anything to do personally with the making of rates and factors that go in them, or is that done by the lines?

The Witness: The conference office has no vote in rate-making. The lines vote individually on rates.

Examiner Robinson: And you have no knowledge of what goes on in the minds of the individual lines in voting one way or the other?

The Witness: Very definitely not.

Mr. O'Connor: You asked about the vote. Now, you asked, does the conference office have anything to do with making the rates, not on voting.

The Witness: Mr. O'Connor, I previously testified that on application for shippers for modification or establishment of rates, I get all the information possible from the shippers, and I assemble that information and put it before the lines, and give them all the facts, the past

[fol. 1458] history on it, the weight and measurement value, what the present rate is, what the yield per cubic foot is, what it represents in relationship to the value, his idea of the reduced rate, what it is he is requesting, what his idea as to cubic foot value, what it represents in relationship to value, the use to which the article is put, the volume of movement, his anticipated volume of movement if he gets the reduced rates, and the reasons for the reduced rates. All those facts are then put before the membership, and the membership vote on the application.

Mr. O'Connor: They substantiate all the facts before the membership?

The Witness: We endeavor to develop the full facts. And another thing we do, we put all those facts, without the names of the shippers, before the committee, and they act principally on the rate factors before them. We also give them the information, if they desire it, of the relative rates in other trades, adjacent trades. And I have available at the time the volume of the movement in that particular commodity, so that they can judge whether or not they would make a needless sacrifice in revenue if that shipper's request was granted.

Let's assume that we are getting 20,000 tons of cargo on that particular commodity. This shipper comes in and needs a reduction of 10 or 15 percent. He is only going to move 500 tons. Obviously, it would be a needless sac- [fol. 1459] rifice of revenue to get that additional 500 tons when we are carrying 20,000 tons of it.

Mr. O'Connor: Isn't it a fact you do do everything in connection with rate-making except the voting?

The Witness: I endeavor at all times to put the complete picture before the member lines.

Examiner Robinson: It is up to the lines to determine whether or not they are going to carry it.

The Witness: That is correct.

Examiner Robinson: You have no knowledge?

Mr. McGovern: I think you just found out, if he was never qualified before, I think in answer to Mr. O'Connor he testified he has all the facts.

Examiner Robinson: That is not the way I understand it. I thought he said he could give all the factors, but he

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doesn't know as to whether or not a particular line is going to operate if he carries that at a loss or profit.

Mr. McGovern: Mr. Examiner, I have never yet in my experience asked a witness to testify concerning anything concerning which he says he doesn't know. I suggest we will get on faster if he says he doesn't know.

Examiner Robinson: All I wanted was the answer.

Mr. McGovern: I am suggesting, sir, that here the conference told Mr. Andrews to negotiate this particular ar-[fol. 1460] rangement. I assume he was in possession of all the facts. But if he wishes to say he doesn't know——

Mr. Galland: Can't we agree that where you have liner rates made with reference to tramp rates, if the bottom drops out of the tramp rates it is conceivable the liner services will lose their shirts on the particular traffic that is covered by the differential rates?

Mr. McGovern: It seems obvious, but no one has been willing to answer the question yet, and you yourself objected, along with Mr. Hupper, when I asked the question.

Mr. Galland: I certainly think the answer is so obvious that even if 40 witnesses say no, the answer is yes.

By Mr. McGovern:

Q. Mr. Andrews, do you think it is obvious?

Mr. Hupper: I object to a pursuit to a proposition which has no basis whatever in fact, because the testimony is that this never went into effect.

Examiner Robinson: Do you know the answer?

The Witness: It is obviously so to the lines, but not to me.

[fol. 1461] Examiner Robinson: I am not trying to cut you off.

Mr. McGovern: I appreciate that. I think we have gone as far as we can on that.

By Mr. McGovern:

Q. Do the membership lines of your Conference operate in the tramp trade as well as in the berth liner service?

A. I think occasionally the lines operate full charter ships.

Q. And full chartered ships you regard as being a tramp operation, regardless of whether the cargo is taken by number and account?

A. Regardless of my opinion, tramps are not covered by our basic agreement.

Mr. O'Connor: That isn't an answer to the question.

The Witness: It is not covered by the basic agreement.

Mr. O'Connor: You were asked if tramp operation just covered bulk or cargo that was by number and account?

A. I don't understand.

By Mr. McGovern:

Q. Let's you and I ask and answer questions. I assumed earlier that you testified that the Commission in Docket 128 required the reporting of rates only where the cargo is moved by number and account. Is that [fol. 1462] your view?

A. I think that is the way—I have a copy of Docket 128.

Q. I am asking for your understanding as Chairman of this Conference.

A. I think under Docket 128 the lines are not required to file items moving in bulk without mark account, but applied to such an item as coal or bulk grain——

Q. That would be regarded whether you were using charter basis or any other basis?

A. That is right; liners or——

Q. The distinction is mark and account?

A. That is right.

Q. Mr. Andrews, your minute for November 20, 1947, reflects in Item 2324-C, does it not, that there was a discussion of the advisability of a more or less standard contract form in all Trans-Atlantic trades as was the case prewar?

A. The minute to which you refer——

Mr. Hupper: What is the date?

A. Meeting No. 206, held on November 20, 1947. The appropriate minute number is 2324 (C). That reads:

"Chairman referred to the principle adopted of a joint contract form with merchants on shipments from Canadian

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and United States North Atlantic ports, and the advisability of a more or less standard contract form in the [fol. 1463] Trans-Atlantic as was the case pre-war."

By Mr. McGovern:

Q. Why, in your judgment, should there be a standard contract form in all of those trades?

A. We like to meet the wishes of various shippers, and have a more or less standard contract form in all the trades so they don't have to examine each one individually.

Q. But is it not the case that the Commission has, from time to time, indicated that the appropriateness of these Conference agreements, and particularly the appropriateness of the contract system, must be determined on the basis of the conditions in each trade?

A. I am only talking about our trade.

Q. I know you are. How many trades did you have in mind, Trans-Atlantic trades?

A. I would say in the Baltic-Scandinavian trade, the United Kingdom trade, the Continental trade, the French-Atlantic trade, and the Mediterranean trade.

Q. As a matter of actual fact, are there contracts in these other trades at the present time?

A. There are.

Q. And are those contracts identical with the contract that is in issue in this particular proceeding?

A. They are substantially the same form of contract as was anticipated in this trade, the Continental trade.

[fol. 1464] Q. Specifically, Mr. Andrews, I direct your attention to an exhibit attached to the affidavit that you put in the District Court proceeding in this case.

You may recall that in your affidavit of November 15, 1948, you included a contract signed by Isbrandtsen as shipper. Do you recall that?

A. Yes, I do.

Q. Covering the Mediterranean trade?

A. He signed it as a merchant in the Mediterranean trade.

Q. Yes. That contract is absolutely identical, is it not, with the contract that is in issue in this proceeding?

A. Not absolutely identical, because the ports and mem-

bership, and I believe the period of the effective date of the contract are different. But substantially, the same type of form as is used in this.

Q. The form, aside from the differentiation between the lines and trades and ports, and quite possibly the commodities and rates, but the form itself is substantially identical, is it not?

A. That is right. And substantially the same form as we used pre-war in that trade.

Q. Now, let me ask you, as Chairman of both of these Conferences, a question that we adverted to earlier; whether or not in this Mediterranean trade you have not taken the position that a shipper who signs a contract is bound to cover in under that contract all cargo han-
[fol. 1465] dled by him, whether it moves f. a. s., f. o. b., c. i. f., or any other basis?

A. I follow the wishes of the lines in that particular trade.

Q. I understand that, but you have just testified now that you regard it as advisable to have uniform contracts and dealings throughout these trades.

A. We endeavor to do so.

Q. Do you take, do you know, a different position with regard to whether or not a shipper who is shipping cargo f. a. s. shall, in the Mediterranean trade, be bound under the contract, and in the North Atlantic trade not be bound?

A. Well, I will take a concrete case. For instance, automobiles: As you probably know, and everybody else knows, those cars are bought f. o. b. the factory. But the automobile manufacturers control that business, even though the consignee or the distributor on the other side buy it here.

Q. Is it your position in the North Atlantic trades that an automobile manufacturer who signs a contract is compelled to ship that commodity under the contract even though it is ordered f. o. b. or f. a. s.?

A. Well, I can tell you a very concrete case where two of the large automobile people had approached me through their Secretary, where we had sent agreements to consignees abroad. Those agreements went to the con-
[fol. 1466] signees. They weren't screened properly. We

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couldn't tell at the time whether they were automobile consignees or not. And I was told that this is a new arrangement of tying up their consignees, because they control the business here.

Now, those cars are bought f. o. b. the factory, and the manufacturers definitely tell me they control that business.

Q. But I am asking you whether or not, as Chairman of the North Atlantic Conference, you take the position that when a manufacturer in this country signs a contract, that he is bound to embrace in that contract all of his shipments, whether they are f. a. s., f. o. b., or any other basis?

A. It covers all the shipments that the consignee controls. Now, let's take a case——

Examiner Robinson: You mean the consignor?

The Witness: No, the shipper.

Examiner Robinson: Well, that is the consignor.

The Witness: Well, consignor.

A. (continuing) But we will take a case where a shipper "A" has been shipping to a given territory on the other side, and regardless of the terms on which the shipments have been purchased, he has been shipping to this consignee or receiver abroad. Overnight this consignee might, by solicitation from a non-conference line, say, "Here, [fol. 1467] you ship some of this business on our line."

Well, he has already received the benefit of the shipper's contract, and he can't have his cake and eat it by taking advantage of a lower rate.

When any cases like that are drawn to my attention, I do write to the shipper involved, and there is no threatening letter about it, I just tell him it has been reported to me that he had a shipment on a line not party to the agreement, and I would appreciate his explanation, and then carry on the correspondence from then on.

By Mr. McGovern:

Q. Suppose he writes back and says that the shipment moved f. a. s., and the consignee asked to have it move over an independent line. What is your position then?

A. As a matter of fact I think I know what you are driving at, and it was more or less a test case in the Medi-

terranean trade by one of the gentlemen sitting alongside you. I am going to tell you the story, as long as you ask for the story.

Q. I want the facts.

A. As a matter of fact, that shipment subsequently moved on a Conference boat.

Mr. Malatzky: Do you know that?

The Witness: You said so.

Mr. Malatzky: Do you know that?

[fol. 1468] The Witness: I am taking your word.

Mr. Malatzky: You made a statement of fact. Do you know that as an actual fact?

The Witness: Not as an actual fact, but you stated it did move on a Conference line.

Examiner Robinson: Let's resolve it right now.

Did it move? Answer the question. Did it move or didn't it? Are you the one that told him that?

Mr. Malatzky: I did. It moved eventually on a Conference boat, but for a reason other than what he would try to intimate.

Examiner Robinson: I don't want the details. I just wanted an answer to that question.

Mr. McGovern: Let me conclude, and then you and Mr. Malatzky can take it up.

I wish to offer for identification three letters so as to have some correlation between questions and answers.

Examiner Robinson: Any particular order?

Mr. McGovern: Just chronological order.

Examiner Robinson: The letter dated October 1, 1948 will be marked Exhibit 18 for identification.

(The letter referred to was marked Exhibit No. 18 for identification.)

Examiner Robinson: The letter dated October 6, 1948 will be identified as Exhibit No. 19.

[fol. 1469] (The letter referred to was marked Exhibit No. 19 for identification.)

Examiner Robinson: The letter dated October 14, 1948 will be marked Exhibit No. 20 for identification.

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(The letter referred to was marked Exhibit No. 20 for identification.)

By Mr. McGovern:

Q. Now, Mr. Andrews, the exhibits marked for identification 18, 19, and 20, refer to this episode of the Mediterranean that you just adverted to, do they not?

Mr. Hupper: May I see them?

(The letters were handed to Mr. Hupper.)

By Mr. McGovern:

Q. Do those letters refer to the incident you just referred to?

A. I think so. I haven't examined them, but I think they do refer to that situation.

Q. Now, Mr. Andrews, at an earlier juncture here, you had started to describe this particular incident, and I think you characterized it as a test case. Would you continue now with your explanation of the situation reflected in those exhibits?

A. Well, according to these exhibits, I wrote to the Joseph Turner & Co., under date of October 1, 1948, and said:

"It is reported to us that you had a shipment of Potassium Bichromate on the S/S CENTAURO to Piraeus. In [fol. 1470] this respect we refer to your contract dated July 7, 1948 with the Conference Carriers to Mediterranean Ports which does not permit of shipment on this vessel and will appreciate receiving your prompt advices in this matter."

[fol. 1471] Joseph Turner & Company replied, under date of October 6, 1948, as follows:

"We acknowledge receipt of your letter of October 1st, relative to the above shipment on the S/S Centauro to Piraeus.

"This material was sold by us directly to Simson Almosnino in Thessaloniki, Greece. We were instructed by our customer to deliver this material to his agent in this country from whom we received payment. The agent in this

country instructed us to deliver this material to the S/S Centauro.

"We hope that the above explanation is satisfactory to you and will appreciate receiving your comment."

To which I replied, under date of October 14th, as follows:

"Acknowledging your letter of October 6, 1948, which replies to ours of the 1st instant, I note your explanation but it is understood that you will not accord to anyone, including Simson Almosnini in Salonica, Greece not having a similar obligation the benefits of your contract with us. In other words, irrespective of the method of purchase i. e. f. o. b. local storage, f. a. s. vessel or c. i. f., should any one receive the benefit of your agreement, they must automatically assume its obligations. Shippers or receivers who do not agree to leave the routing with you for the entire period are not, at any time, to receive the benefits [fol. 1472] of your contract and we expect you to call to our attention each such specific shipment."

Q. Is that last reply of yours to Mr. Quackenbush?

A. Yes, Mr. Quackenbush, Joseph Turner & Company.

Q. Does that last reply of yours represent the conference's position in the North Atlantic trade as well?

A. I don't know. We haven't put the contract system into effect. We wouldn't have any violations under it.

Q. Assuming the contract system were in effect in the North Atlantic trade with precisely the same form as used in the Mediterranean trade, would the policies set forth in the letter be applicable to it?

A. The policies in the Mediterranean would not necessarily apply to the continental trade, and I can't prejudge what they will do until the situation is before us.

Q. But under the policy set forth, I take it is the conference's position that if a receiver abroad, let's say Mr. X, has already received a shipment from a shipper in this country, let's say Mr. Y, which has moved under Y's contract with the conference, that X is thereafter precluded from receiving shipments from Y which shall move on non-conference vessels?

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A. Are you talking about continental ports?

Q. I am talking in terms of the policy set forth in that letter.

A. You are talking of the Mediterranean or the Continental?

[fol. 1473] Q. I am talking in terms of the policy set forth in the last letter that deals with the Mediterranean ports.

A. That is correct. I think it is so stated in the correspondence I just read.

Q. But you say as of this moment, since the contract system is not in effect in the North Atlantic, no policy has been declared with regard to the North Atlantic trade?

A. They haven't established any policy on it.

Examiner Robinson: If it is convenient, let's have a short recess.

(A short recess was taken.)

Examiner Robinson: I guess we are ready.

By Mr. McGovern:

Q. Mr. Andrews, I would like to come now briefly to the discussion on the case of various minutes of the meeting of the conference with regard to the adoption of the contract system. I think that the first notation in the conference minutes with regard to the merchant contract, appears in the minutes for June 6, 1946.

A. It does refer to the standard form of contract agreement with merchants.

Q. Would you read that minute, please.

A. "Chairman to submit to counsel proposed modification in contract form as discussed. Subject continued on docket."

Q. That is the entire minute, is it?

[fol. 1474] A. That is correct.

Q. Now, sir, coming down to the minute for September 12, 1946, item No. 2238.

A. Yes.

Q. Would you read that minute, please, with reference to the merchant contract?

A. "Report by chairman. Consultation with counsel on proposed modification in contract form was noted. Subject continued on docket."

Q. Then, coming down to the minute for October 10, 1946, item No. 2248.

A. Yes.

Q. Would you read the reference there to the contract form?

A. "The changes and additions previously circulated respecting current conditions be incorporated in the standard contract form were approved."

Q. And then, in the minute for November 14, 1946, item No. 2255.

A. Yes.

Q. Would you read that minute, please?

A. "It was agreed that the contract form embraced all ports (Antwerp, Rotterdam, Amsterdam, Hamburg, Bremen, Bremerhaven)."

Q. May I interrupt this, Mr. Andrews, to ask what was the significance of that note. Had the contract form in existence prior to the war not embraced all ports?

[fol. 1475] A. Pre-war there were two separate contract forms to the continental ports, one taking in the ports of Belgium and Holland, and the other, Germany.

Q. And this was the resolution to——

A. Would embrace all the ports to Belgium, Holland, and Germany. In other words, to take in the scope of the basic contract agreement approved by the United States Maritime Commission.

Q. Why was that change made, Mr. Andrews? Was there a difference in the character of the trade to those ports pre-war and post-war that justified that change?

A. No, I can't think of any reason at the moment as to why they had separate forms.

Q. And there is no reason set forth here on that minute there to explain why you adopted a single contract form for all ports?

A. Yes. The lines wished in the proposed contract form to be sent out to have one agreement embracing all of the ports covered by the basic agreement 4490.

Q. Do you happen to know of your own knowledge

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whether the Isbrandtsen Company operated to German ports prior to the war?

A. It is not my understanding they operated to German ports on any regular basis. They may have had a ship in occasionally, but my recollection is they did have some tramp shipments to German ports via ports in Belgium [fol. 1476] or Holland.

Q. But prior to the war they confined their regular sailings largely to Holland and Belgium?

A. It is not my understanding they had any regular service during the war to German ports.

Q. Coming down right to the minutes of November 20, 1947—before we come to that, Mr. Andrews, let me direct your attention to the minutes of March 1947. There is a brief reference in that minute to the merchant contract, is there not?

A. Yes, there is on the minute—no, I can't see anything there at the moment. March, 1947. Oh, yes. I am sorry.

Q. That is item number what, please?

A. It refers to minute 2276 (C), and after the caption of the minute reads: "Discussed and continued on docket."

Q. Now, on June 12, in the minutes of the meeting of June 12, 1947, you again have a brief reference, do you not?

A. That is correct.

Q. Would you read that reference, please?

A. "Subject continued on docket."

Q. And in the minute for the meeting for October 9, 1947, there is again a brief notation, is there not?

A. You skipped September, 1947.

Q. I don't have it here. Is there a reference to September, 1947?

[fol. 1477] A. Yes.

Q. Will you read it?

A. "Subject continued on docket."

Q. That is probably the reason why I skipped that one. In October, Mr. Andrews, do you find a notation?

A. Yes.

Q. Will you read it?

A. "Noted that United Kingdom Lines have under consideration a Joint General Commodity Rate Agreement. Subject continued on docket.

Mr. O'Connor: Is there anything about a contract form or anything else in that minute of October 9th?

The Witness: Not in that particular minute, no. No, I can't see it.

By Mr. McGovern:

Q. The reference then in that minute really is the notation "Continued on the docket," is it not?

A. I didn't hear.

Q. I say the reference in the October 9th minute to the merchant contract is really the notation, "Continued on the docket."?

A. After I recited the previous part of the minute, it closed with, "Subject continued on docket."

Q. Now, coming to the minute for November 20, 1947, Mr. Andrews, that is the minute to which we referred earlier, you will recall, in Item 3234 (C), in which there [fol. 1478] was a discussion of the advisability of a more or less standard contract form in all Atlantic trades as was the case pre-war?

A. Yes.

Q. Is there any other reference to the merchant contract in that minute?

A. Merely that, "Subject continued on docket."

Q. Yes.

Now, coming down to the minute for January, 1948, Item 2333 (c).

A. Yes.

Q. Would you read that item, please?

A. "Contract rates. Standard form of contract agreement with merchants. Subject continued on docket. Chairman to confer with conference counsel on suggested change in retroactive penalty provisions, Article 4 in draft of the Joint General Commodity Contract form with merchants now under consideration."

That is the end of the minute.

Q. As of the date of that meeting, had your earlier consideration of the contract form contemplated the inclusion of a retroactive penalty provision?

A. I believe it did have—I believe we did carry into that form the same clause as we had in the pre-war form which had a retroactive penalty feature.

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[fol. 1479] Q. Now, in this same January, 1948 minute, you have a reference in Item 2339 to the Maritime Commission's decision in Docket 648, do you not?

A. Yes, there is a reference to that on the minute 2339.

Q. Do you know whether the suggested change in the retroactive penalty provision was made as a result of the Commission's decision in Docket 648?

A. Yes. As soon as I got a copy of that decision I promulgated to ask member lines and called their attention to the retroactive penalty provision, and also then took up with conference counsel to have an appropriate change made in our pre-war clause.

Q. Directing your attention now, Mr. Andrews, to the minute for March 4, 1948, that contains, I think, a brief notation.

A. It does.

Q. Will you read it, please?

A. "Chairman referred to recent circular which contains suggested clauses dealing with the retroactive penalty provision of Article 4 in draft of Joint General Commodity contract form with merchants. A number of the member lines expressed themselves as favoring suggestion B with some modification in the circular. Subject, however, was continued on docket."

Q. Do you have that circular present, Mr. Andrews, and if so, can you tell us what were the suggestions con-[fol. 1480] tained in the circular?

A. I don't know whether I have that circular with me or not. (Examining document) No, I haven't got it with me. I think I can get it. I don't know.

Q. I wonder if we could have it produced some time during the luncheon recess so we could examine it this afternoon?

Mr. O'Connor: Is that the circular of March 10, 1948?

A. It doesn't refer to a date here. It refers to a recent circular, so it couldn't have been March 10th, for these minutes are dated March 4th.

Mr. O'Connor: In May the 20th you referred to a circular of March 10, 1948?

The Witness: We were only talking of March 9th.

Mr. McGovern: For the moment we were, that is right. Could we go off the record for a moment?

Examiner Robinson: Off the record.

(Discussion off the record.)

[fol. 1481] By Mr. McGovern:

Q. Coming down to the minute for April 14th, does that minute for April 14th have any notation as to the contract system?

A. Yes, it does.

Q. Will you read it, please?

A. "Reference was made to Conference circular of March 10, 1948, containing suggested clause dealing with retroactive penalty provision in contract form. Member lines who have not yet furnished Conference Office their views agreed to do so promptly."

Q. Now, Mr. Andrews, the March 4th minutes referred to a circular, and now in the April minutes you refer to a circular of March 10th. We would like both of those minutes if you——

A. Minutes or circular?

Q. Both of those circulars. Pardon.

Mr. Hupper: Circular date——

The Witness: We don't have the date of the other one, but we do have the date in the date of March 10th in the April minutes.

By Mr. McGovern:

Q. Coming down to the May 20, 1948 minute, what is the notation on that minute with regard to the letter either from or to Mr. Sproule?

[fol. 1482] A. The minute did refer to a letter of May 10th to Secretary Sproule.

Q. Would you read that entire minute, please?

A. Yes.

"All member lines (Canadian Lines still to furnish their views) agreed to amend Article 4 of the contract form as quoted in circular of March 10, 1948.

"Chairman also read a letter of May 10, 1948 to Secretary Sproule, and reported to the meeting discussion which

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took place on this matter at a Joint Rate Committee meeting held on May 18, 1948.

"After further consideration, suggestion was adopted that a committee from this Conference be appointed to meet as promptly as possible with a committee of the Canadian Lines in an endeavor to bring this matter to a prompt conclusion. The following committee of the member lines was appointed:

"Black Diamond Steamship Corporation, Mr. Terhune; Belgium Line, Mr. Zagat; Holland-American Line, Mr. Maarschalk; United States Lines, Mr. McIntyre; Waterman Steamship Corporation, Mr. Haley.

[fol. 1483] "In this connection, Chairman read letter of May 12, 1948 from United States Maritime Commission summarizing the condemned matters in Docket 648, and requesting information as to when revisions, if any, of the contract rate form may be expected."

Q. It would appear from that notation, then, that the Sproule letter is a letter of May 10th that you wrote to Mr. Sproule, is that right?

A. I recall writing a letter to Secretary Sproule dealing with the contract form to United Kingdom ports.

Q. What was your interest in that contract form as Chairman of the North Atlantic Continental Freight Conference?

A. Merely on the basis of uniformity in the contract form.

Q. What about rates?

A. That letter referred to nothing about rates.

Q. There is no arrangement between yourselves and the Canadian Lines as to the quality of the rates in the United Kingdom?

A. Yes, in the United Kingdom between U. K. Conference Lines operating from United States ports, and U. K. Lines operating from Canadian ports, there is a cooperative rate agreement which is on file and approved by the United States Maritime Commission. As a matter of fact, it was the first type of agreement ever negotiated between two countries.

[fol. 1484] Q. Yes. Now what about an agreement between member lines of the North Atlantic Continental

Freight Conference serving United States ports and the Continent, and lines members of the U. K. Continental Freight Conference?

A. There is no agreement.

Q. No agreement?

A. No understanding or any agreement.

Q. And you will undertake, will you, to produce your letter to Mr. Sproule?

Mr. Hupper: Wait just a minute. That is what we will not undertake to do. A communication between Mr. Andrews and Mr. Sproule relating to U. K. matters has nothing to do with this case.

Mr. McGovern: It does not appear on the minute what the contents of that letter are.

Mr. Hupper: A letter to Mr. Sproule about some matter that doesn't concern this case.

Mr. McGovern: We have no idea what is in it.

Mr. Hupper: I will tell you that, and that is enough.

Mr. McGovern: It is not enough for me unless you are going to testify. Mr. Andrews, Chairman of the Conference, giving consideration to the inauguration of the contract system in this Conference, wrote the letter to Mr. Sproule.

[fol. 1485] Mr. Hupper: He has a right to do that, but——

Mr. McGovern: I say the only indication is that it does refer to the introduction of the contract system in the North Atlantic Continental Freight Conference. I have no way of ascertaining whether the letter is pertinent.

Mr. Hupper: I will tell you the contents in an informal way, but it is no part of this case, I can assure you.

Mr. O'Connor: We will have to ask for a subpoena, then, Mr. Examiner.

Examiner Robinson: You will have to write out a subpoena duces tecum.

Mr. McGovern: We will be glad to do that. I don't think Mr. Hupper can assert whether the Sproule letter is or is not relevant.

Mr. Hupper: Of course, you have no right exploring all around the place letters written from the Conference to any number of people. We produced the minutes as a matter

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of courtesy. That doesn't mean you are entitled to ask for the production of everything referred to there.

Now, I am saying to you that I have seen what I understand is a copy of the letter to Mr. Sproule, and it contains nothing of any relevancy here. You don't have to believe me, but I will say that as counsel I have a certain duty and a right to make a statement in respect of the same. You [fol. 1486] may not agree to it, but I make the statement nevertheless.

Mr. McGovern: I am not challenging the integrity of your statement. I merely point out the minutes on f with the Commission refer to that letter, and the minu indicate the letter was written by Mr. Andrews as Cha an of the Conference in connection with the introduction into this Conference of a contract rate system.

That certainly is sufficient tie-up to indicate presumed relevance.

The Witness: The minute so states. It doesn't say I wrote the letter. It says, "The Chairman also read the letter of May 10th to Secretary Sproule."

By Mr. McGovern:

Q. Did you write it?

A. I did, but you mentioned it was stated in the minutes. It is not stated in the minutes.

Q. I thought you testified you wrote the letter?

A. I did write the letter.

Examiner Robinson: Maybe I am confused, but didn't you say that the minutes show that the letter refers to the contract?

By Mr. McGovern:

Q. Let's have a reading of the minute again.

A. I will be glad to. This particular portion you have [fol. 1487] under discussion reads:

"Chairman also read a letter of May 10, 1948 to Secretary Sproule and reported to the meeting discussion which took place on this matter at the Joint Rate Committee meeting held on May 18, 1948."

Q. Yes. Now, you recall that your minute of April 14th refers in greater detail to that letter, does it not?

A. No, it does not.

Q. Will you go back——

A. You said April. April only referred to a circular.

Q. Well, is that this letter or not?

A. It is not.

Examiner Robinson: I am trying to see if there is anything on the——

Mr. McGovern: Anyway, the minute of May 10th referred to it in connection with the contract system. Now, I say an examination of the letter may reveal it is completely material.

Mr. Hupper: Well, I disagree with that statement. My proposition is, you are not entitled to go searching far and wide in respect to letters.

Mr. O'Connor: Will you agree to show it to the Examiner and let him decide whether it is relevant?

Mr. Hupper: I might even show it to you people. You [fol. 1488] never can tell.

Examiner Robinson: You are just that arbitrary.

Mr. McGovern: My only thought, Mr. Examiner, was if we could see those two letters, and the circular letters, I understand, dated——

The Witness: One undated, and one dated March 10th.

By Mr. McGovern:

Q. You don't deny those are in reference to the contract system, Mr. Andrews?

A. No. I don't deny it, no.

Mr. McGovern: Well, if we could just see those some time before we resume after lunch—otherwise, we feel we will have to call for a subpoena.

Examiner Robinson: I don't think we will have to take any drastic action.

By Mr. McGovern:

Q. Coming down to the minutes for June 1948, Mr. Andrews——

A. Yes.

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Q. —will you read that notation, please, with regard to merchant contract?

A. Minute 2364: "Standard Form of Contract Rate Agreement with Merchants. Chairman reported that the special committee appointed on the Minute 2354 met with committee of the Canadian minds on June 2, 1948, in Montreal, who are prepared to use the Joint General Commodity Contract Rate Agreement with merchants on [fol. 1489] shipments, Canadian and United States North Atlantic Ports, as was the case pre-war, with certain minor changes, provided following addendum to the Cooperative Rate Agreement No. 4490-A between the two Conferences is effective:

" 'In the case of the establishment of a regular service, the members of the Canadian Continental Eastbound Freight Conference agree not to berth vessels at the United States North Atlantic Ports of the North Atlantic Continental Freight Conference, and the members of the North Atlantic Continental Freight Conference agree not to berth vessels at the Canadian Ports, Montreal and East thereof, of the Canadian Continental Eastbound Freight Conference without prior consultation, giving full reasons for the contemplated reasons for the berthing at the ports under the jurisdiction of the other Conference, and full consideration shall be given to the views of the consulted Conference before decisions to berth such vessel is reached, but nothing herein will prevent the berthing as previously of an occasional vessel. Such agreed consultation shall be unnecessary on the conditions of emergency such as war, governmental direction, strikes, embargoes, operation or navigation necessity, and so forth.'

"After discussion, the member lines adopted a report and recommendations of the Special Committee, subject to [fol. 1490] review by Conference Counsel, and expressed their appreciation and thanks to the Special Committee for the time and prompt attention given to this matter."

[fol. 1491] By Mr. McGovern:

Q. That agreement represented, did it not, an agreement between the Canadian lines and the lines members of the North Atlantic Continental freight conference not to berth

in each others ports without advance permission from each other?

A. Not on occasional berthing, but where there is going to be a regularly established service.

Q. Yes. In other words, a Canadian line could not establish a regular service from a North Atlantic United States port without the advance permission of the North Atlantic Continental Freight Conference?

A. That was their suggestion, which is still before us, and it has not yet been officially put before the Commission, and it is not in operation.

Q. In other words, then, the notation on the face of this minute that the conference report was adopted does not reflect an agreement on the part of the North Atlantic Continental Freight Conference with the terms of that?

A. It can't be carried into effect until the Commission approves it. The lines operating from United States ports and the lines operating from Canadian ports have agreed to this proposed arrangement, but it still hasn't been approved by the Commission. We haven't yet fully placed it before them, and it is therefore not in effect, and cannot be carried into effect until we first receive the approval [fol. 1492] of the United States Maritime Commission.

Q. Well, is there any understanding operating at the present time between the membership of these two conferences that they will not formally engage in regular service in each other's ports?

A. No. They are free to go as they please.

Q. The Canadians are theoretically free to go down and start a service in the North Atlantic?

A. There is nothing to prevent them, and the United States Lines can go to Canadian ports.

Mr. Galland: Mr. Examiner, I have no objection to this line except it seems to be taking a lot of time on a matter that I don't see to be within the scope of the inquiry.

Mr. McGovern: It is quite clearly within the scope of the inquiry. It indicates on the face of the minutes that the contract form that was adopted was subject to this report by a joint Canadian and North Continental Committee, that the adoption of the contract form would be

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subject to this agreement that each would not berth in the other's ports.

The Witness: It was adopted and put into effect, the contract system, until we got the restraining order. This agreement has not yet been approved, and the lines are not operating under it, so you can't say it was subject to it.

By Mr. McGovern:

[fol. 1493] Q. You are testifying to those facts. I am asking the question, the minutes indicate it was adopted.

A. It was adopted between the two groups of lines, one operating from Canadian ports, and the other from United States ports.

Q. But you say, as a matter of fact, that does not represent an adoption of an agreement between the two groups?

A. It represents a meeting of the minds between the two groups. But the agreement cannot be carried into effect until it officially receives the approval of the Commission, and therefore, the lines operating from United States ports today operate from Canadian ports if they wish, or Canadian lines can come down here and operate from United States ports.

Q. Since June, 1948, has any Canadian line operated regularly out of North Atlantic ports of the United States, or has the North Atlantic Continental Freight Conference Lines operated out of Canadian ports?

Mr. Hupper: I object to this line of questioning.

Examiner Robinson: I don't see—I am perfectly willing for you to explore the contract, but he says the agreement was not approved and that they have the right. Whether they do is something else.

Mr. McGovern: I am not sure it is something else.

Mr. Hupper: We are getting awfully far afield.

By Mr. McGovern:

[fol. 1494] Q. On the face of the minute you cannot determine whether there was an agreement or not?

Examiner Robinson: I think he answered that.

Mr. McGovern: I agree, he has stated those facts.

By Mr. McGovern:

Q. You do not contend that this agreement, if you do decide to effectuate it, falls under conference agreement 4490-A?

Mr. Hupper: I object to what he contends about something that is not in issue.

Mr. McGovern: He referred to 4490-A.

Mr. Hupper: You are going far afield. If you want to stay here all night, I will stay with you.

Mr. McGovern: I want to stay as long as it is necessary to get the facts.

Examiner Robinson: Answer the question, if you know.

The Witness: May I have the question?

By Mr. McGovern:

Q. You referred earlier to the joint agreement between the Canadian Continental Freight Conference and the North Atlantic Continental Freight Conference, which is 4490-A. I say that you do not contend, did you, that this agreement——

Mr. Hupper: Let him examine him.

By Mr. McGovern:

Q. Are you familiar with Exhibit 1-D in the record? [fol. 1495] Mr. McGovern: The witness referred to it earlier, so I assume he is familiar with it.

Mr. Hupper: I know, but what does his contention matter.

Mr. Galland: The question relates to what may happen in the future, and I can't see what it has to do with the case, and I think it is an outrageous waste of time to everybody here.

Examiner Robinson: Wait a minute. Read the question.

(The reporter read the uncompleted question, as follows:

"Question: Are you familiar with Exhibit 1-D in the record?")

By Mr. McGovern:

Q. (Continuing) —that this agreement with regards to not berthing in each other's ports without the advance permission of the interested lines, reflected on the June, 1948 minutes, falls under this conference agreement 4490-A?

A. It would be. It is my intention, if we ever get to it, to modify agreement 4490-A to embrace this understanding. But it hasn't been put to the Commission yet, and so it is not in effect, and it is not being carried out.

Q. Yet it was first considered as a matter of agreement at least in June of 1948, was it not?

A. It was a meeting of the minds of the two groups representing the Canadian and the United States ports.

[fol. 1496] Examiner Robinson: I think we understand.

By Mr. McGovern:

Q. Coming down to the minute of September 16, 1948, Mr. Andrews, item 2371 refers, does it not, to the merchant contract system?

A. That is right, 2371 refers to the standard form of contract rate agreement with merchants.

Q. Will you read that minute, please, Mr. Andrews?

A. "Recorded that Joint General Commodity Rate Agreement with merchants on shipment from Canadian and United States North Atlantic ports approved by the North Atlantic Continental Freight Conference and the Canadian Continental Eastbound Freight Conference, and now being printed, will be effective November 1, 1948 through December 31, 1949 (continuous form). Also that tariff will be promptly amended by including therein rules in respect of the contract and non-contract rates, chart of non-contract rates, and list of items not subject to contract.

"The action of several lines in advising, and in one case issuing a circular to the trade abroad of the recent establishment of the contract rate system before contracts have been sent out by the conference office, which will be done the end of September, 1948, was deprecated."

Examiner Robinson: What does that mean there, "chart of non-contract rates"?

[fol. 1497] The Witness: That, I think, is an exhibit—the chart showing if the contract rate is 50 cents, what the non-contract rate is.

Examiner Robinson: Just a tariff setup?

The Witness: Yes, sir.

By Mr. McGovern:

Q. That minute for September 16, 1948, is the minute that reflects the agreement on the part of the membership of the North Atlantic Continental Freight Conference to adopt and use the standard merchant contract system effective November 1, is it not?

A. That is correct.

Q. At the time that that decision was made, was it your intention to file that particular agreement to use the contract system with the Commission?

Mr. Hupper: I object to that question. It is an obvious matter of law that no such arrangement has been filed with the Commission for approval. It is covered both as a matter or rate practice under the law, and in this case it happens to be a definite provision in the conference agreement and approving the use of the contract, non-contract rate system. I object to the pursuit of propositions of this kind through this witness. When it comes to arguments, I am ready to deal with them.

Examiner Robinson: Let's hear the question.

[fol. 1498] (The reporter read the question.)

Examiner Robinson: There is nothing wrong with the question.

Mr. Galland: What relevance has it, what his intention was?

Examiner Robinson: He is the man who is going through all this business.

Mr. Galland: I don't care what man he is, the question is what the facts are, and what was done.

Mr. Examiner: That is one way of finding out.

Mr. McGovern: I didn't ask for an opinion on the law. I merely asked him to testify about the facts with regard to his intention.

Examiner Robinson: I understand.

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By Mr. McGovern:

Q. Will you answer the question, Mr. Andrews?

A. We just filed our contract form with the Commission by a correction to the tariff.

Q. Was an actual copy of the merchant contract forwarded to the Commission?

A. It was an actual copy of the contract, and it still appears in our tariff on file with the Commission.

Q. Have you received any indication from the Commission that they have approved that merchant form?

A. We don't require the approval of rates or the contract [fol. 1499] form from the Commission.

Q. Coming now to the minutes for October 1948, Mr. Andrews, there is a notation there, is there not, in connection with the discussions with the automobile manufacturers association?

A. There is.

Q. Would you read that minute, please?

A. "Minute 2377 (B), automobiles, trucks, and so forth. Chairman advised that at indication of the ocean rate committee, automobile manufacturers association, he met with that committee on October 21, 1948, at 11 a. m. in their offices to discuss the automobile contract offer effective November 1, 1948. Also, that at the request of the automobile committee, tariff rates and conditions (no contract) had been extended through December 31, 1948. Chairman further advised that he will meet again with the automobile committee some time during November 1948 to discuss contract rates and conditions."

Q. Now, apparently, as a result of the discussions reflected on that minute, Mr. Andrews, you extended to the automobile manufacturers the same rates as existed prior to November 1, for the continuous period up to and including November 31st?

A. We had extended the same rates not on*u* the contract, as the matter provides to all shippers of automobiles, trucks, and parts.

Q. And that without requiring them to sign a contract effective November 1st?

[fol. 1500] A. It was a request which I received from the ocean committee of the automobile manufacturers,

which I placed before the member lines, and they acceeded to the wish of the automobile committee.

Q. Well, now, in granting to the automobile manufacturers association the right to use the existing rates until December 31, without requiring the signing of a contract effective November 1st, did you not discriminate in favor of the automobile manufacturers as against all other shippers who were required to sign as of November 1st?

Mr. Hupper: I object to that question.

Examiner Robinson: I think the question is objectionable. Not the subject matter, but the way you put it.

By Mr. McGovern:

Q. All right, I will strike out the word "discrimination," and let me ask whether or not, in your judgment, you did not grant a very decided advantage to the automobile manufacturers?

A. We granted no advantage because the contract system didn't go into effect.

Q. Well, but that was of no concern of yours, or no fault of yours?

A. It was very much a concern of ours.

Q. This was in October, 1948. October 28, 1948. At this time you did not know of any temporary injunction issued by the District Court. Presumably your meeting with the automobile manufacturers had been prior to the [fol. 1501] date of this meeting, had it not?

A. I didn't get advice of the restraining order until October 29th.

Q. Yes, but your meeting with the automobile manufacturers had been sometime prior to this meeting, had it not?

A. It must have been during—it was on October 21, 1948.

Q. At that time you didn't know that there was going to be a temporary injunction, and consequently you must have assumed the contract system was going into effect November 1st?

A. I think that is a reasonable assumption.

Q. So that, for all shippers other than the members of the automobile manufacturers association, they were going

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to be compelled to sign a contract on November 1st in order to obtain the existing rates after that date, is that not true?

A. In actual practice it didn't work out.

[fol. 1502] Q. I am asking what your intent was at the time that you talked to the members of the Automobile Manufacturers Association on October 21st?

Mr. Hupper: I object to this line of questioning being purely speculative and irrelevant.

Mr. McGovern: It is not speculative at all. He talked to the Automobile Manufacturers on October 21st. That was long before he had any idea there would be a temporary injunction enjoining the use of the contract system November 1st.

Mr. Hupper: There is no connection with other kinds of cargo competitive with automobiles, no suggestion if other shippers had requested a delay they wouldn't have received it. It is purely argumentative, unduly broad, and irrelevant.

Examiner Robinson: Let me put it this way; does this answer your same purpose: Did he get any requests from any other shippers for the same type of treatment? Is that what you are driving at?

Mr. McGovern: I would much rather ask him whether or not he extended this same advantage to any other group of shippers.

Examiner Robinson: Yes.

A. We didn't get any similar requests from any other shipper.

[fol. 1503] By Mr. McGovern:

Q. But you testified you had approximately 3,000 signed contracts by the date when the temporary injunction became effective.

A. I think I testified to that effect.

Q. Absent the temporary injunction, those contracts would have gone into effect November 1, 1948?

A. Yes.

Q. Although during the succeeding 60-day period the automobile manufacturers would have gotten existing rates without having signed contracts?

A. They would have gotten it, and on no different basis than the other shippers, because the injunction was served on October 29th.

Q. Coming to the minute December 9, 1948, Item 2383-H, Mr. Andrews——

A. Yes.

Q. —that minute refers, does it not, Mr. Andrews, to a memorandum from the Swiss agent to member lines in re non-Conference competition?

A. I think the minute was incorrectly headed. It should have read "foreign representation."

Q. Will you read it?

A. "Minute 2383 (H), Rates, Non-Conference Competition. Memorandum previously circulated was presented from Swiss Agent of the member lines of discussion on [fol. 1504] the subject matter at recent meeting held in Basel, Switzerland. Subject continued on docket."

Q. Do you have a copy of that memorandum with you, Mr. Andrews?

Mr. Hupper: I will say I have a copy of it here.

Mr. McGovern: Could we see it, Mr. Hupper?

Mr. Hupper: I will consider that.

By Mr. McGovern:

Q. While Mr. Hupper is considering that point, Mr. Andrews, could we go back just for a moment to this earlier item with regard to the Automobile Manufacturers Association.

I understand that you have testified that the effect of the arrangement you worked out with them, had there not been a temporary injunction from the District Court, would have been to have allowed the members of that Association to ship automobiles in the period November 1 to December 31, at the rate that had existed prior to November 1st, without their having signed a contract; is that correct?

A. That is the way the minute reads.

Q. Now, I understood yesterday from Mr. Rosenthal that he believed, though he wasn't certain, that Stein, Hall had signed a contract. Do you know, as a matter of fact, whether they did or did not?

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A. I checked it this morning, and they did sign the agree-
[fol. 1505] ment.

Q. So you had a signed contract from Stein, Hall?

A. That is correct.

Q. Now, let's assume there had been no injunction from the Supreme Court, and that——

Mr. Hupper: I object to the assumption of something that couldn't have happened.

Examiner Robinson: We don't know what the question is going to be yet.

Go ahead.

By Mr. McGovern:

Q. Assume that after November 1st, namely November 10th, Stein, Hall undertook to ship three automobiles to Antwerp. Would those automobiles move under Stein, Hall's contract?

A. Stein, Hall doesn't ship automobiles. But if he had shipped, it would be covered by his all shipment contract.

Mr. Hupper: Except for the injunction.

Examiner Robinson: He said, if there hadn't been an injunction.

By Mr. McGovern:

Q. And since Stein, Hall had signed, or any other shipper had signed an all-commodity contract, they would have been bound, would they not, to have shipped their automobiles via a Conference Line in the period November 1st to December 31st, in order to escape breaching their contract?

[fol. 1506] A. I am glad you mentioned Stein, Hall, because Stein, Hall did raise the question of their contract obligations subsequent to October 29th, and I advised them that there was an injunction in effect, and their contract was not effective.

Q. I appreciate that, but I am saying, pass the question of the injunction—we know that operated to stop all of your activities in that connection. But passing the injunction for the moment, had there been no injunction in the period November 1st to December 31st, the members of the Automobile Manufacturers Association could have

shipped automobiles on your lines, and at the time have shipped them on independent lines without paying any penalty over the Conference Lines; is that true?

A. They could have done that, yes, if the injunction hadn't gone into effect.

Q. During the same period, could any one of the other 3,000 shippers who did sign a contract, have shipped automobiles via an independent carrier without breaching their contract with you?

Examiner Robinson: When did your contract go into effect?

The Witness: It was to have gone into effect on November 1st, but it did not go into effect. All this is hypothetical.

[fol. 1507] Examiner Robinson: I appreciate that.

By Mr. McGovern:

Q. What is your answer?

Mr. Hupper: I object to that "over 3,000 shippers of automobiles."

Examiner Robinson: He said any other kind of shipper.

Mr. Hupper: No, he is talking about automobiles.

Mr. McGovern: I said any one of the other 3,000 shippers.

Examiner Robinson: I think it all goes to the complaint against the contract. Go ahead.

By Mr. McGovern:

Q. What is your answer, Mr. Andrews?

A. I would like to have the question again.

Mr. McGovern: Will you read it?

(Pending question read by reporter.)

A. I presume when the shipper signs an agreement he has every reason to live up to it.

By Mr. McGovern:

Q. Well, that is not entirely responsive, I think, Mr. Andrews. Is that answer meant to imply if such a shipper

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had shipped an automobile in the period November 1st to December 31st, he would have breached his contract to ship all his commodities via the Conference Lines?

[fol. 1508] A. He couldn't have breached it, because it never did go into effect.

Examiner Robinson: We are skipping that part now. Just forget about the injunction for a moment. Would he have been compelled to ship under that contract beginning November 1st?

The Witness: Is was an obligation to ship all of his business with the lines mentioned in the agreement.

By Mr. McGovern:

Q. So that, to that extent, you extended in that 60-day period, did you not, to the Automobile Manufacturers Association, a privilege and a right which was not available to any other shipper using the Conference Lines?

A. I just testified I don't think Stein, Hall ever shipped an automobile.

Mr. Hupper: If you would bring it down to competition between other kinds of cargo with automobiles, there would be some point in the question.

By Mr. McGovern:

Q. I bought an automobile November 10th and shipped it via an agent to my wife in England.

A. I will answer that. You wouldn't have to sign a contract, for that is not commercial business, it is personal effects, or household effects, so it went as personal goods, so you wouldn't be covered.

[fol. 1509] Mr. O'Connor: That is exempt?

The Witness: That is right. It is not commercial business.

Mr. O'Connor: That includes household goods, corpses, and human ashes?

The Witness: That is right. It is not commercial business.

By Mr. McGovern:

Q. Now, suppose I, as the McGovern Exporting Company, shipped an automobile to my wife in Great Britain, and I also ship coffee and toys. Would I breach the contract if I shipped it via Isbrandtsen?

A. It still wouldn't be commercial business if the car being sent abroad was not for commercial sale. So therefore it wouldn't be commercial business.

Q. All right. Let's go back to this matter of the Swiss memorandum.

Mr. Hupper: I will have to look at it during the lunch hour.

Mr. McGovern: I have just one additional question with regard to the contract proposition.

By Mr. McGovern:

Q. The minute for December 9, 1948, Mr. Andrews, also contains a comment on Isbrandtsen's case in the District Court, does it not?

[fol. 1510] A. Yes, it does.

Q. Would you read it, please?

A. I will be very glad to.

"Minute 2386. Contract and non-Contract Rate System—Complaint Isbrandtsen & Co., Inc. versus United States of America, North Atlantic Continental Freight Conference, et al., Civil Action, File No. 47-749. Reported that the District Court of the United States for the Southern District of New York, on complaint dated October 28, 1948, by Isbrandtsen & Co., Inc. against the United States of America, North Atlantic Continental Freight Conference, et al., issued restraining order on October 28, 1948, and ordered defendants to cause to show before the Court on November 3, 1948, why preliminary injunction should not be granted. The Court further ordered that until and including November 3, 1948, and until the further order of the Court, defendants are restrained from taking any steps to execute or effectuate the contract.

"Also reported that Conference counsel submitted to the Court, along with other documents, memorandum dated November 5, 1948, on behalf of the defendants, to vacate

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[fol. 1511] and dissolve forthwith the restraining order of October 28, 1948, and to deny application for temporary injunction. Member lines were also informed of recent developments of this matter and impression of Conference counsel that a decision in this matter might be anticipated next week. Several members deprecated the long overdue decision in the matter as materially interfering with orderly methods of doing business and diverting traffic to non-Conference lines."

Q. Now, there is an indication there, is there not, that the effect of the injunction was materially diverting traffic to non-Conference Lines?

A. The minute so states. That was the report of several lines.

Q. That means, then, does it not, in your judgment, that the effect——

Examiner Robinson: Of course, that "materially," if you look at it, it could refer to either one or both of those two subjects. It says, "as it was materially interfering with the orderly method of doing business and diverting traffic to non-Conference Lines."

Now, which one do you want "materially" to—or do you want him to answer that?

[fol. 1512] Mr. McGovern: I would just as soon have the answer. I assume if you diagram that, that it would modify the two. But let's pass that.

By Mr. McGovern:

Q. It meant to indicate the effect of the injunction was to divert traffic to non-Conference Lines?

A. I don't know what the effect was, but I merely reported that several member lines deprecated it. Whether it did or not, I couldn't tell you at the time. I am merely recording the statement which several member lines had made.

Q. Can we day the necessary implication of that, in your judgment, is that the purpose of the contract system was to prevent the diversion of the traffic to non-Conference Lines?

Mr. Hupper: Well, I object to a question of that sort. We have the facts here.

Mr. McGovern: There are no facts here to speak of other than it was diverted, and I am asking the witness.

Examiner Robinson: He can answer, if he knows.

Mr. McGovern: Read the question.

(Pending question read by reporter.)

A. The purpose of the contract is self protection and rate stability.

Mr. McGovern: Do you wish to adjourn at this juncture, Mr. Examiner?

[fol. 1513] Examiner Robinson: Yes. You said you had only a couple more questions.

We are adjourned until two o'clock.

(Whereupon, at 12:30 p. m. a recess was taken until 2:00 p. m.)

[fol. 1514] AFTERNOON SESSION

2:00 p. m.

Examiner Robinson: Come to order.

Mr. McGovern: Mr. Examiner, before the conclusion of the morning session we had directed Mr. Andrews' attention here to two *cir*culars that apparently were submitted to the conference membership in connection with the adoption of the contract system, and we had asked whether or not those could be made available for examination by the complainant at this time.

Mr. Hupper: The answer with respect to those two circulars is that they are dated February 7, 1948 and March 10, 1948 respectively, and they are produced.

Examiner Robinson: In other words, they can see them.

Mr. McGovern: May we examine them, please?

(Mr. Hupper handed the document to Mr. McGovern.)

Cross-examination (Continued).

By Mr. McGovern:

Q. Mr. Andrews, this circular letter to the membership dated February 7, 1948 reflecting the change that was made

in the retroactive penalty provision of the contract was made as a result of the Commission's decision in the Docket 648, is that correct?

A. That is not correct. There was a subsequent circular [fol. 1515] dated March 10th which shows the one that was adopted.

Q. Yes, but I am saying the change in the old form.

A. The proposed change, if you put it that way, that is correct.

Q. Yes, and the March 10th circular already shows the change that was finally agreed upon by the membership?

A. That is correct.

Mr. McGovern: Mr. Examiner, we offer both of those circulars into evidence since they indicate the various proposed types of penalty provisions that the conference *conference* contemplated in an effort to meet the requirements of the shipments in 648, and demonstrates the evolutionary phase of that provision until it reaches the form we find in the present contract.

Examiner Robinson: Is there any objection?

Mr. Hupper: If you change the word "penalty," to "damage," I have no objection.

Examiner Robinson: Well, that won't go, they will be received and marked 21 and 22, the one of February 7, 1948 will be 21 in evidence, and the one of March 10, 1948 will be 22 in evidence.

(Documents above referred to were marked Exhibit 21 and 22 in evidence.)

Mr. O'Connor: May we have possession of those, Mr. Examiner, to have copies made?

[fol. 1516] Examiner Robinson: Yes, they are marked in evidence. The responsibility will be yours to give them back.

Mr. O'Connor: I will take them to my office when we get through and have copies by tomorrow morning.

Mr. McGovern: Mr. Examiner, before the luncheon recess there was also some discussion of a letter written by Mr. Andrews to Chairman Sproule of the Canadian Conference, and I believe that the record was left with Mr. Hupper volunteering to examine the document and consider whether

or not it will be made available to us in this afternoon session.

Mr. Hupper: I have examined that document, and as a matter of courtesy, not a legal requirement, I make available a copy of that letter dated May 10, 1948.

(Mr. Hupper handed a document to Mr. McGovern.)

Mr. McGovern: Thank you very much, Mr. Hupper.

By Mr. McGovern:

Q. Now, Mr. Andrews, as to the contract form that was adopted by the North Atlantic Continental Freight Conference for effectuation as of November 1st, the contract form that we understand was suspended in its operation by virtue of the temporary injunction, but which had been contemplated to have been put into operation on November 1st, you have a copy available, do you?

A. Yes.

Q. Now, I understand that your earlier testimony was [fol. 1517] that this contract form which you have before you, and which has been marked No. 14 for identification, was adopted by the conference on September 16, 1948, for effectuation on November 1, 1948, is that correct—item 2371 in your minute of September 16th?

A. You said September 18th—that was dated September 16th.

Q. I beg your pardon, I should have said the 16th.

A. It is recorded as being adopted in minute 2371, meeting No. 212, held September 16, 1948, to become effective November 1, 1948.

Q. And immediately after the adoption of the contract form in that minute on September 16th, I understood your testimony to be that you distributed these form contracts to the entire merchant trade in so far as you knew of merchants' existence?

A. On or around October 1st, I dispatched offers of contracts to all merchants shippers and *and* receivers, who previously appeared on our list, and they all went out about that time.

[fol. 1518] By Mr. McGovern:

Q. And I understand your earlier testimony to be that you used a pre-war mailing list so that you were not able to ascertain how many of the contracts sent out reached the designated addressees?

A. We did use our pre-war mailing list, and we found in a number of cases that shippers and consignees had gone out of business and left no forwarding address.

Q. And you estimated, as I recall, that approximately 3,000 of the contracts were returned, signed by various shippers?

A. I said it was a rough estimate.

Q. Yes. We reviewed this morning a series of notations on the face of various of the minutes of your meeting with reference to the proposed adoption of this contract form. It is a fact, is it not, Mr. Andrews, that no place on the face of those minutes is there reflected anywhere any showing the reason for the adoption of the contract system in the North Atlantic trade at this time, or any other time?

A. It wasn't stated in those minutes that you referred to, but it is a well known fact in the trade as to the purpose of those agreements.

Q. Well, would you then state for the record, since the minutes are silent on that point, what, in your judgment, was the purpose of adopting the contract system as of [fol. 1519] November 1, 1948?

Mr. Hupper: I object to that question. The system was adopted, the minutes show what they show, and it is not his business to talk about the purposes of other people.

Mr. Galland: If he didn't ask the question, I would.

Examiner Robinson: Don't worry; I am going to let him answer.

Mr. Hupper: Well, I suppose I am entitled to make a record.

Examiner Robinson: Go ahead, Mr. Andrews.

Mr. Hupper: I think he can give you an answer.

Mr. O'Connor: He can give you an answer all right, don't worry.

The Witness: As authorized in the basic agreement which provision for contract or non-contract rates, which agree-

ment was approved by the United States Maritime Commission, we are following out the mandate of that basic agreement. The purpose, of course, is to promote the commerce of this country and to bring about rate stability and, as far as possible, to prevent—I should put it a different way, self protection, or, to put it in reverse, self destruction.

By Mr. McGovern:

[fol. 1520] Q. You failed to mention stability of service. Was that also one of the principal purposes?

A. It would be a factor that by having a contract and non-contract system, in my judgment, it would bring about regularity of service.

Q. You refer now to a mandate in the basic agreement. That is 4490?

A. That is correct.

Q. I assume that you didn't mean to state that as a mandate, did you?

A. Well, I should put it a different way—a provision in there.

Q. Authorizing the use of the specific contract and non-contract rates?

A. The mandate I referred to is to bring about rate stability. That is one of the primary purposes of the basic agreement.

Q. Yes, but you did mean to imply that the Commission had ordered you to do one thing rather than the other?

A. I didn't wish to give an implication.

Q. Well, now, assuming that you had those purposes in mind, what was the particular necessity for putting the contract system into effect on November 1, 1948, rather than March 2, or March 1, 1946.

A. We would have loved to have gotten it in March 1946, but, my dear friend, you have got a lot of lines in [fol. 1521] that trade and you can't get everything done at one time. It takes an awful lot of time and effort and energy to get all of these different ideas of all of these various lines, and they are comprising American and foreign flag lines, and you can't do everything at one time.

Q. Well, now, in the period between March '46 and No-

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vember '48, is it your view that the North Atlantic trade was unstabilized? What is your response, Mr. Andrews?

A. I am just trying to think what the question was, again.

Q. I asked whether or not in your judgment between March 2, 1946, when the lines were returned to private operation, and November 1, 1948, the North Atlantic trade was unstabilized?

A. There was a good possibility of it being unstabilized, yes.

Q. I am asking whether or not it was, in your judgment, unstabilized as a matter of fact?

A. On some commodities, it may have been.

Q. Well, can you state whether or not, in your judgment, it was, as a matter of fact, unstable?

A. It was becoming unstable, I can put it that way.

Q. Now, what factors, in your judgment, were contributing to that prospective instability?

A. Well, that I couldn't answer.

[fol. 1522] Q. You mean you just had a sort of a fear that there would be instability?

A. There was a possibility.

Q. It wasn't very concrete?

A. It was gradually coming to it.

Q. But it wasn't very concrete; you couldn't put your finger on particular factors?

A. You could put your fingers on some commodities, maybe not all of them you were talking about generally.

Q. Yes, do you have any particular commodities in mind?

A. Not at the moment, but I could probably dig them up for you.

Q. Well, the only point that I was trying to come at, Mr. Andrews, and I say again, I am only trying to elicit the facts, you appreciate, whatever they are in your knowledge——

A. I will try to help you as much as I can.

Q. The minutes are silent as to any reason or necessity for the institution of the Conference system, and I am asking you whether or not in your knowledge you can fill in that void in the minutes by supplying those missing facts?

A. As a matter of fact, I don't think the minutes are

deficient in that respect, because the contract-non-contract system had been in effect in this trade for 25 years prior to the outbreak of war, and there was every intention when the cessation of hostilities came for the lines to re-estab-
[fol. 1523] lish that contract-non-contract system.

Q. During the period, let us say, from about 1930 down to the beginning of the war, you say the contract system was in effect.

A. The contract system was in effect until June 1940, when the contracts were cancelled.

Q. During that period, did it succeed in achieving stability, in your judgment?

A. I think in a great measure it did.

Q. You do? But it is a fact, is it not, that from '31 down to the beginning of the war, you always had independent operation berth service in that trade?

A. My friend, as long as I have been in this business, and it is over 25 years, the contract and non-contract system has never eliminated a non-Conference operator.

Examiner Robinson: Let me ask you just one question, Mr. Andrews.

In that 2-year period between 1946 and '48, what was the relationship between the amount of cargo leaving and the number of ships available to carry that cargo?

The Witness: Well, that is a very difficult question.

Examiner Robinson: What I am specifically driving at is this: wouldn't you say that every ship that you could get your hands on could be filled, approximately, every-
[fol. 1524] body, whether you were a Conference Line or otherwise?

The Witness: I think there was plenty of cargo at the time, if that is what you are driving at.

Examiner Robinson: That is what I am driving at.

Mr. McGovern: Are you suggesting in the period from 1931 to 1939 there was plenty of cargo for all boats in the trade?

The Witness: I don't think the Examiner asked that.

Examiner Robinson: I said the two-year period.

Mr. McGovern: Which period?

Examiner Robinson: '46 to '48.

By Mr. McGovern:

Q. Well, in the period 1931 to 1939, are you suggesting there was plenty of cargo available for all vessels available?

A. No, very definitely not. A lot of the lines went out with plenty of space empty, particularly a lot of the *out*-ports.

Q. And during that period you have had independent berth service operating in this trade?

A. Yes, I think they will always be with us.

Q. And yet you indicate you think there was a considerable degree of stability from '31 to '40?

A. I think there was.

[fol. 1525] Q. So the presence in any given trade, or, at least, the presence in this trade of independent lines operating does not make for instability, particularly?

A. It can, and has.

Q. But in your own experience from '31 to '39, it did not?

A. I think the contract system brought about a great deal of stability.

Q. But the contract system during that period was on a limited number of items, was it not?

A. Well, it is all according to what you term "limited."

Q. Well, how many items, specifically, was it on in the period '31 to '39?

A. I can say right up until the time the contracts were cancelled, we had contracts on about 706 items.

Q. Out of a total listing of what number?

A. Oh, it could be anywhere from 1700 to 1900 items in the tariffs, without counting the cross indexes.

Q. Now, let me just suggest a technical suggestion on the record, Mr. Andrews. You indicated that the contract system had, you thought, been in effect for 25 years prior to the war. Twenty-five years from 1939 would bring you back to 1914. You don't mean to suggest it was in effect then?

A. What was that period again, you said?

Q. You testified, I believe, that the contract——

[fol. 1526] A. I was talking from 1949 to around 1925-24.

Q. You had the contract system in effect in 1924?

A. That's right.

Q. Even though Basic Agreement 4490 was not approved until 1935?

A. My friend, you have got to go back to a previous basic agreement about which I testified. That was No. 48, which 4490 superseded and cancelled.

[fol. 1527] Q. Did 48 contain provision for the specific contract and non-contract——

A. (Interrupting) I believe it did, but in my opinion it doesn't make any difference whether it is in or not, it is a rate in practice.

Q. Now, you have suggested the purpose of this contract, I take it, to do principally two things, one is to stabilizing service or regularize service, and the other is to stabilize rates. Do you agree that, as Mr. Rosenthal testified, that one of the purposes is to permit the shipper to engage in forward bookings on the assurance he is going to have a rate he can count upon?

A. I think that is a very important thing for shippers.

Q. Well, now, may I direct your attention just briefly, Mr. Andrews, to the contract itself, that is, Exhibit 14 for identification. The first numbered paragraph, rather, the second numbered paragraph provides that, "This contract covers all export shipments of the Merchant of the hereinnamed, or provided for" commodities moving out of United States, North Atlantic and Canadian ports to or through ports of the aforesaid countries——

Now, in your judgment, does that mean precisely what it says, that this contract covers all export shipments of the merchant?

A. It so states in the form.

[fol. 1528] Q. Well, now, let us assume that General Motors signs one of these contracts and then General Motors seeks to send a full cargo of cars via Isbrandtsen, is that movement covered by this contract?

A. It covers all of General Motors' business.

Q. Let's assume General Motors decides to export a full cargo of coal to one of its plants in Belgium or Holland, is that covered by this contract?

A. It is all all-shipment contract.

Q. Now, Mr. Rosenthal testified yesterday that it was his understanding as a shipper that he had an obligation

under this contract to ship all of his shipments via the conference lines. Pursuing that thought for a moment, Mr. Andrews, there is, down at the foot of the contract a list of the various lines who are members of the North Atlantic Continental Freight Conference. Now, suppose in addition to the lines shown there, Lykes Bros. were to be admitted to this conference that at some given point when Mr. Rosenthal seeks to effectuate a shipment out of New York, the only conference line on berth is a Lykes Bros. liner, he would be obligated to ship via Lykes Bros., would he not?

A. He would be if they became a party to it, if they became a member of the conference and automatically became a member to this agreement as provided in the opening paragraph.

Q. And yet, if Ellerman's Wilson Line and the Belgian Line and the French Line were to withdraw from the con-
[fol. 1529] ference after Mr. Rosenthal had signed his contract, he would have no recourse against them for failure to supply the sailings that they had previously been supplying, would he?

A. When a line withdraws from the agreement and you pick out some lines that have been in the trade for a good many years, when they withdraw from the conference agreement they are automatically eliminated from the contract form.

Q. But I am saying that the lines acknowledge no obligation to the shipper to provide service, do they?

A. I haven't heard a case where they don't provide service.

Q. I am directing your attention, though, to this contract form. Mr. Rosenthal agreed, and I take it you agree, that Mr. Rosenthal is stuck when he signs the contract, he has an obligation to ship via the conference lines. Now, for the moment I am asking you, in your judgment, what is the reciprocal obligation on the part of the conference to provide sailings for him?

A. I think you have got to go back over the past history of when these contracts were in effect for the many years they have been in effect. They have rendered the service to the shippers, they are well aware of the performance

of the conference lines, honor them, and I think they look in good faith to the continued serving of those shippers.

Q. For example, how long has Black Diamond furnished [fol. 1530] service in this trade?

A. Well, they were in a good many years before the war. If I were hazarding a guess, I would say 15 or 20 years, maybe longer.

Q. They were not in on March 2, 1946 when the conference re-established, were they?

A. They weren't in at that time, but they subsequently became members.

Q. How long has the South Atlantic Steamship Line been in?

A. Only—I think I can tell you the exact date—(examining document)—they became a member of the North Atlantic Continental Freight Conference March 4, 1948.

Q. And had they been in this trade in the pre-war period?

A. Not in the pre-war period, but they operated to the ports of discharge in this area from South Atlantic ports for a good many years.

Q. Now, how about Waterman Steamship Corporation, had they been in that trade pre-war?

A. No, they weren't.

Q. Was the Moller-Maersk in this trade pre-war?

A. Yes, they were.

Q. Were they a member of this conference?

A. No, they were not.

Q. Do you suggest, you indicated, did you, that Maersk was in this trade although not in this conference?

[fol. 1531] A. Yes, they were part of Isbrandtsen-Moller Company.

Q. Maersk was part of Isbrandtsen-Moller?

A. Yes.

[fol. 1532] Q. I take it, then, from your testimony that the only assurance that a shipper like Mr. Rosenthal has that he is going to get any regular service from the Conference members arises from facts outside this contract, facts that you say lie in his experience that he knows that these lines have been in the trade for a number of years, and he is probably justified in expecting they will continue to be in the trade; is that your view?

A. Yes, as a matter of fact, our particular office in handling—our particular office has been handling Conference matters for more than 70 years.

Q. And yet it is a fact, is it not, that the complainant here, the Isbrandtsen Company, has been giving regular berth service in this trade for a much longer period than many of your Conference Lines?

A. Some of them, but there are other lines in the trade that have been in there for 75, 78, or 80 years.

Q. That may be, but I am merely suggesting that Isbrandtsen gives the shipper a greater assurance than many of your Conference members?

A. I don't know whether he has given a greater assurance at all.

Q. Suppose, Mr. Andrews, for the sake of the record we go down through these individual lines that are named at the foot of your contract, and could you indicate for us [fol. 1533] how long they have been in this trade, if you know?

A. I could get the information and give you the exact time they have been in since the approval of 4490, but I would have to consult the records.

Q. Well, would you undertake to see if you could procure that detail?

A. I think I could for you.

Mr. Hupper: It seems to me it is quite immaterial. You are putting additional burdens on Mr. Andrews all the time.

Mr. O'Connor: He just said some of these lines had been in there 70 years.

The Witness: I can tell you one, the Holland-American Line.

Mr. O'Connor: All right. That is one out of 12, 13.

Mr. McGovern: He has said, Mr. Examiner, the assurance the shipper gets under this contract of regularity of service arises, not from the face of the contract, but from his long experience with the lines, so I think it is pertinent to find out what experience the shipper has had with these lines.

Mr. Hupper: You are going pretty far into the forest, aren't you?

Mr. McGovern: It is a minor matter. I think he could [fol. 1534] supply it.

Mr. Hupper: It seems to me we are going pretty far about a narrow issue.

Mr. McGovern: I am not going to argue that——

Examiner Robinson: Well, he said he could furnish it.

The Witness: Let me know specifically what you are after.

By Mr. McGovern:

Q. The lines, members of the North Atlantic Continental Freight Conference that are named at the foot of your merchant contract, how long has each of those lines been in this North Atlantic trade between these ports?

Mr. Hupper: I don't want him to go back any further than the time the contract rate system came into use.

The Witness: See, a lot of our records go back to, well, I shipped some of them back to 1882, 1872.

Mr. McGovern: We don't want you to go back further than the Shipping Act, I would think, Mr. Andrews. It is a fact, though, Mr. Andrews——

Mr. Hupper: I am not going to ask Mr. Andrews to go into a lot of history when these lines began. What is convenient I will kindly ask him to do it; what is not, I will tell him to disregard it. Somebody has got to put an end to this talk some time.

[fol. 1535] Examiner Robinson: Can you, without any trouble, find out which ones were operating as of 1916—does that satisfy you?

Mr. McGovern: Yes, if we could have 1916 down to the present time.

The Witness: Wait a minute——

Examiner Robinson: No; I though you meant the ones that were in business as of 1916.

Mr. McGovern: Well, specifically, to make this thing pertinent, Mr. Examiner, I suppose we ought to contrast the regularity of the sailings in this trade of those lines with Isbrandtsen.

Now, Isbrandtsen came into the trade in '31, so if you will take a period just before that down to the beginning

of World War II, what lines were in the trade, it will serve the purpose I have in mind, I think.

Mr. Galland: Would it be satisfactory to have him give us the total number of sailings by Conference vessels during each of the years that you are interested in?

Mr. McGovern: Well, I haven't asked for a breakdown as to sailings by individual lines, Mr. Galland. I am merely anxious to find out, for example, in 1939 how many were in the trade.

Examiner Robinson: Well, why not start with 1916? That is the enactment of the Shipping Act. You can look [fol. 1536] at it and see which ones are in it now.

The Witness: Well, I have a circular here of ours issued on September 10, 1887.

[fol. 1537] It shows the French Line is a member, then the Hamburg-American Line, North German Lloyd, Red Star, Rotterdam Line, Union Line, White Cross Line, Bordeau Line.

Now, you have got the French Line there, the Hamburg-American went out because of the war, and the North German Lloyd went out because of the war, the Red Star is the Holland Line and the Rotterdam the Holland and American Line, so there is 1887, my friends.

Mr. McGovern: That history is interesting, but perhaps we don't understand each other entirely, Mr. Andrews. I understood you to suggest the shipper had no assurance by virtue of this conference there would be regular sailings offered by the members of the conference lines. I understood you further to say that the assurance he did not have rose out of his experience with the regularity of the sailings over a number of years by these various lines. Now, I would like to have you, if you can, contrast that with the fact that Isbrandtsen has given regularly scheduled sailings in this trade since 1931 down to the present time. The situation with regard to the conference members as shown at the bottom of this conference——

Mr. Hupper: Everybody knows, Mr. McGovern, that there was ample service over the conference lines for as many years as anybody can remember. Why do you talk about it unless you can show there hasn't been?

[fol. 1538] Mr. McGovern: I can show there hasn't been some. The Waterman Steamship Company is one.

Mr. Hupper: Yes, sir, they have just come in.

Mr. McGovern: They were not here——

Mr. Hupper: What difference does that make?

Examiner Robinson: Wait a minute, haven't you got the number of voyages they made within the last couple of years? I am just trying to recall——

The Witness: I gave it for the years 1937, 1947, and '48.

Examiner Robinson: That is what I thought.

Mr. O'Connor: I understand, Mr. Examiner, if I may, the witness testified that the shippers relied on stability of service because these lines have been in the trade so long. All we want to know is how long these lines mentioned in this contract have been in that trade.

Examiner Robinson: Well, I am going back to admiralty in '16. Just give him that one year.

Mr. O'Connor: No, we don't want that one year, we want to know how long these 12 lines have been in this trade.

Mr. McGovern: The point being that some lines might have come into the trade in 1929. We would like to know that, too. I am indicating that Isbrandtsen had been in the trade since '31, in other words, 18 years, leaving out the war period. Now, which of these lines here have [fol. 1539] been in the business for a longer or a shorter period? That is what I am coming at.

Mr. Galland: Well, now, the shipper isn't bound to any particular member of the conference, and it seems to me that the revelant inquiry in this point is how much conference service has been available year by year over the years. We know how many sailings there were in '47 and '48. If it is available, I think it would be interesting to know how many sailings there have been in, say, each of the years in '14. I don't see how it is relevant which line gives it.

The Witness: I wouldn't be able to furnish any sailings from 1914 on, because during the period there was a war.

Mr. Hupper: Mr. Examiner, can't we focus on the present situation? That is what is being talked about in the complaint. What has the history of the number of sailings got to do with it?

By Mr. McGovern:

Q. Can you estimate, Mr. Andrews, how long the Cosmospolitan Line has been in this trade? Estimate it—were they in the trade in 1930, to the best of your knowledge?

A. I am just taking a look at these minutes, which you had an opportunity to examine last night, and it shows that the Cosmopolitan Line was in there in March 1946, and it is my recollection they were in the conference before [fol. 1540] the war. Now, what period I couldn't tell you. I can't keep those things in my head.

Q. And Black Diamond Steamship Corporation, you indicated was in the trade before the war?

A. Oh, yes, they were in way long before the war.

Mr. O'Connor: They were in the trade, but were they in the conference?

The Witness: I am talking about the trade.

By Mr. McGovern:

Q. What about the French Line?

A. They have been in business for, I guess, about a hundred years.

Q. In this trade?

A. They have been in the continental and French Atlantic, yes.

Q. And they have been a member of the conference during all that period that you have served as secretary?

A. I don't know without checking it.

Q. But Black Diamond, you indicated, was not a member of the conference, pre-war?

Examiner Robinson: One of the Diamond Lines was.

By Mr. McGovern:

Q. How about the Belgian Line?

A. They have been in the trade for a good many years. [fol. 1541] Q. In the conference for the same period?

A. I don't know what you mean by the "period."

Q. Well, for as long as they have been in the trade?

A. I couldn't tell you that without finding out what time

they came in the trade and what time they joined the conference.

[fol. 1542] Q. Well, I am just suggesting, Mr. Examiner, that I think that would be interesting information but if it isn't to be secured, why, it isn't.

A. Don't misunderstand me. I will give you all the information I can dig up for you.

Q. Well, I am merely suggesting this, Mr. Andrews, that you suggest, and that Mr. Rosenthal yesterday suggested, that the assurance the shipper has of regularity of service arises not out of this contract, because there is no assurance here, but it arises out of his experience with these particular lines in this trade.

Now, I think it is material to show what experience he could have had.

Mr. Hupper: Now, Mr. Examiner——

Mr. McGovern: With Waterman Steamship Corporation, he obviously hadn't had any assurance.

Mr. Hupper: I want to register a firm objection to this wasting of time, and I move that further questions on this point be dispensed with. We are dealing here with a matter where the issue presented by the complaint is very narrow, indeed. There is no evidence, not the slightest, or the suggestion of any such that any shipper who wanted to ship over a Conference Line at any time in 25 years hasn't been able to do so. We are looking to the future. It doesn't make any difference if some line came into the [fol. 1543] Conference only yesterday. There is no suggestion that that line, if it came into the Conference or into the trade, not being in the Conference, would furnish such regularity of service. It might be useful to itself and to shippers, and we are just wasting time by going into such a subject as this.

Examiner Robinson: Do you want, Mr. Andrews, to go back and dig over that?

Mr. McGovern: I am suggesting I think it is material, Mr. Examiner.

Examiner Robinson: I haven't ruled on it. I just wondered whether we couldn't arrive at some——

Mr. McGovern: I am trying to test the credibility of

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his statement that the shipper had this assurance. Now, what assurance does he have?

Mr. Hupper: What he has now.

Mr. McGovern: If they don't want to put it in, it is all right with me. I am not going to pursue it any further.

Mr. Hupper: Don't worry about it.

Examiner Robinson: If you don't insist on it. I am satisfied, if you are satisfied, to put the burden on them.

By Mr. McGovern:

Q. Coming back briefly to the contract, Mr. Andrews, it is a fact, is it not, that in that contract neither any [fol. 1544] of these lines individually, nor all of them taken together as a combination, agree to carry a single ton for any shipper?

A. Well, it is an agreement between merchants on behalf of those lines, and I think there is provision that he make his booking direct with the line.

Q. Well, suppose Mr. Rosenthal, if this temporary injunction was not operating, Mr. Rosenthal tried to ship next week and there wasn't a Conference Line on berth?

A. There is a provision in the agreement.

Q. Wait a minute. Now, in your judgment, could he then hold the Conference responsible for any damages that he might incur by virtue of having to use a non-Conference Line?

A. That is a legal question which I am not qualified to answer.

Q. Let me put it the other way.

Mr. Hupper: Read the contract. You will see what it says.

By Mr. McGovern:

Q. (continuing) What is the fact with regard to the contract in this contract—is it a fact that the Lines accept the obligation to carry the tonnage offered?

A. I can't recall any case where the Lines turned away [fol. 1545] any business because they weren't able to carry it.

Q. I am asking you what the fact is in regard to the Conference itself?

Mr. Hupper: I object to the question of what the contract provides.

Examiner Robinson: Of course, I realize that the contract is the last word, but after all, Mr. Andrews is the promulgator of it on behalf of the carriers, and I think it is fair to ask him what his ideas are on it.

The Witness: We have nothing to do with the actual booking of the cargo.

Examiner Robinson: No, I appreciate that, but I mean you did draw up the contract.

The Witness: Yes, with the able assistance of our attorney.

Examiner Robinson: Quite right. But do you have any personal feeling about it—I mean, after all, you are a party to it?

The Witness: Well, I would know very quickly if a shipper couldn't get space, because he would look at the agreement and call us.

Examiner Robinson: That is not the question he asked you, now. He wanted to know the question for responsibility for not being able to get space.

Mr. Hupper: In Paragraph 3 you will find it all set forth.

[fol. 1546] By Mr. McGovern:

Q. Will you look at paragraph No. 3, Mr. Andrews, where, in fact, that imposes an obligation on the conference lines to carry any tonnage——

Mr. Hupper: That isn't what your question is now.

Mr. McGovern: That is my question. I don't know——

Mr. Hupper: Look at the final sentence in there.

Mr. McGovern: I will ask my question right now, Mr. Hupper, if I may, and at the end of my examination you can ask any questions you wish.

Mr. Hupper: I am trying to direct his attention to it.

Examiner Robinson: All right, Mr. McGovern, go ahead.

By Mr. McGovern:

Q. Do you find this contract, in fact, imposes an obligation on any member of this conference to actually carry any tonnage for any shipper?

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A. Yes, I think it does. He—the second sentence of paragraph 3 reads: The merchant agrees to make application for space as early as practicable before the vessel's advertised sailing date. If the carriers fail to name space within three business days after the merchant duly applied therefor, on a vessel scheduled to sail from the port of shipment selected within 15 days after the seaboard clearance they desired, the merchant shall be free with respect [fol. 1547] to such shipment to secure space elsewhere without prejudice to his right to future shipment under this agreement but before making such arrangement the merchant shall first give the office of the conference an opportunity to arrange space.

If the shipper found he didn't have space, he would consult the conference office, and we would shop around to see if the conference lines didn't have space, and if they didn't have space, we would tell him he was free on that shipment.

Q. You indicate he is free if he doesn't get the conference space to go somewhere else, but I am asking you whether or not there is an obligation in that paragraph you just read on the part of the conference membership to provide space for the shipper at the time when he wants it?

A. I think the shipper so understands there is an obligation there.

Q. Well, the contract actually provides, does it not, that the shipper shall have his right and this right alone, he has the right *to* apply for space?

A. He applies directly to the individual member of the contract arrangement.

Q. All right. Then in the next sentence the individual member, if he fails to allocate any space, what does the shipper do?

A. If he couldn't find space in that, he would probably [fol. 1548] go to another line.

Q. Well, let's assume he found as little space in the next line?

A. All right, let's assume that he called all of the lines, members of this——

Q. Yes?

A. —members of this, parties to this agreement. He would probably call me on the telephone. I would get somebody busy to see if that was a correct statement, and give him an answer probably the same afternoon.

Q. And if it was a correct statement, what would your answer be?

A. That he would be free to use any line in the trade.

Q. But he is not free to insist that you are under an obligation to supply him with space?

Mr. Hupper: Kindly look at paragraph 4, the first sentence.

By Mr. McGovern:

Q. Will you look at paragraph 4, the first sentence, Mr. Andrews.

A. Yes.

Q. Would you read that, please, that first paragraph?

A. "The carriers severally agree to furnish the merchant at the rate or rates named or provided for herein space in such vessels as they may respectively load at said loading ports for transportation and discharge at the [fol. 1549] port desired, provided that suitable unbooked space is available therein when the merchant makes application. If the merchant shall make shipment hereunder for the benefit of some party not holding or conforming to a similar agreement, or shall make shipment in violation hereof, then the carrier shall have the option at any time to declare this agreement terminated, and the merchant shall be liable to the carrier for liquidated damages equal to twice the amount of freight that would have been payable under this contract in respect of the shipment constituting the violation."

Q. Yes. Now, the first sentence provides, does it not, that the carriers shall carry the merchant's tonnage in boats if they have any, and in space if they have any, but there is no obligation on the part of a single member of your conference, is there, under that paragraph to provide a sailing or a boat or space?

A. The document very clearly states that the carriers severally agree to furnish the merchant——

Q. Go on, furnish them what——

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A. The carriers severally agree to furnsih the merchant at the rate or rates named or provided for herein made in such vessels as they may respectively load at said loading ports.

Q. Suppose they don't load any at such loading ports?

A. Then, as I previously stated, he consults the conference office. If we found no space available, he would [fol. 1550] be free with respect to that shipment.

Q. And then he may, I take it, have recourse to the only real guarantee of stabilized service he has got, namely, an independent carrier, is that right? That is what you are suggesting, is it not, in the final analysis, the merchant can have recourse to an independent?

A. I don't think it would be manifestly fair to hold the shipper when the conference lines had no space.

Q. I agree with you, it would be manifestly unfair.

A. And we have never——

Q. You have never done that?

A. No.

Q. In such case, you tell them to go deal with an independent, "He will give you the stabilization?"

A. We don't tell him, we tell him he is free.

Q. He is free——

Mr. Hupper: You don't suggest there has been any lack of sailings, do you, Mr. McGovern, on the part of the conference lines or anybody else?

By Mr. McGovern:

Q. Now, one additional question on that aspect of it, Mr. Andrews. Your basic conference agreement 4490 in paragraphs 10 and 11 does contemplate, does it not, that the carrier shall be free to withdraw from the conference? [fol. 1551] A. There is a provision in that.

Q. Upon very short notice?

A. I think it is 15 days.

Q. 15 days, I think. Now, let us come just briefly, then, to your suggestion that the shipper has a guarantee by virtue of this contract of regular rates to protect him against forward bookings. What is the provision in this contract that you believe guarantee the shipper that sort of protection?

A. Any shipper, even though he has signed one of these agreements, if he wants a forward booking period for six months, we will be glad to comply with his request.

[fol. 1552] Q. Is there anything in this contract that indicates that you will bind yourself to maintain these rates for six months?

A. No, but we have done it.

Q. I am talking about the contract, though, which is in issue here.

A. Well, we are quite prepared to meet the shipper's wishes at any time for a forward trading period.

Q. But under the terms of this contract, is it not the fact that the most protection the shipper gets is 80 days?

A. It works out about, roughly speaking, about 82 days.

Q. And did you hear Mr. Rosenthal testify yesterday that——

A. He said something about 20.

Q. That such a—well, he was wrong on the period, but did you hear him testify that 90 days was not what he meant by forward protection, that he was talking about a guaranteed rate for one year?

A. As a matter of fact, if certain shippers require a longer trading period, the Conference Lines are ever ready to meet their wishes.

Q. But that guarantee is not given to the shipper in this contract, is it?

A. It may not be stated here, but every shipper knows that he can get a longer trading period if he so wishes, and our tariffs reflect that, too, from time to time.

[fol. 1553] Mr. O'Connor: I have got just a few questions on the minutes that came to my attention, Mr. Andrews.

Examiner Robinson: Are you through, Mr. McGovern?

Mr. McGovern: I am through, Mr. Examiner.

By Mr. O'Connor:

Q. As I gather from the minutes of March 7, 1946—— Strike that out, please.

In the minutes of March 7, 1946 there is a reference to the attempt of Black Diamond to become a member of the Conference, is there not?

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A. There is a reference to the membership of the Black Diamond Steamship Corporation, Minute 2212, the meeting No. 191, held March 7, 1946, which reads:

"Black Diamond Steamship Corporation, Maritime Commission Docket 643. Reported for record that in proposed report in Docket 643 the Examiner recommended that the United States Maritime Commission should find that Black Diamond Steamship Corporation is entitled to membership in the North Atlantic Continental Freight Conference. Also that exceptions to the proposed report which were due on or before March 5, 1946 had been filed. Subject continued on docket."

Q. Am I to understand by that that when the Examiner in that Docket 643 reported that Black Diamond should [fol. 1554] be admitted to the Conference, that the Conference filed exceptions to the Examiner's report?

A. The matter was naturally handled——

Mr. Galland: Mr. Examiner, just a minute. I object to this line of questioning on the ground of irrelevance unless Isbrandtsen contends that it is seeking admission to this Conference and being denied.

I understand that Isbrandtsen is not interested in admission to the Conference under any circumstances, or on any terms, and I don't see why it matters that there was a squabble between the Conference and Black Diamond some years back.

Mr. O'Connor: Well, I must state in reply to the objection, there has been so much said here about the Conferences welcoming and being so ready and willing to take in somebody, I am trying to pursue this Black Diamond to the ultimate date they got in.

Mr. Galland: Black Diamond is in.

Mr. O'Connor: Will you let me——

Mr. Galland: What is the use of taking up the afternoon on this?

Examiner Robinson: I think we have already got it in that I made the recommendation, and Black Diamond was admitted. The Commission made them put him in. Does [fol. 1555] that satisfy you?

Mr. O'Connor: Well, yes, I want to correct the date

that the decision came down from the Commission—on May 28, 1946, according to these minutes.

Mr. Hupper: Just a minute. Are you passing to something else?

Mr. O'Connor: Just these points.

Mr. Hupper: Well, are you passing by the Black Diamond episode?

Mr. O'Connor: Yes.

Mr. Hupper: With regard to that, I will say that I was counsel on a point involved——

Mr. O'Connor: I object to this——

Mr. Hupper: Just a minute.

Mr. O'Connor: I object to any reason. I just want to show when Black Diamond got in.

Examiner Robinson: Let's see what he has got to say.

Mr. Hupper: I am going to state the point involved in opposition to that appiication was Messrs. Black Diamond were deemed by the opposing interest not yet to have become a carrier, but under their certificate of incorporation they were merely agents for WSA, as I recall it.

That was the point that was litigated, and the only point, and the Commission finally determined it was in order nevertheless that they should be brought in, and [fol. 1556] they were brought in.

By Mr. O'Connor:

Q. Now, will you turn to your minutes of May 9, 1946, Mr. Andrews?

A. May 9th?

Q. Yes. In Item 2225.

A. Yes.

Q. Will you read it, please?

A. "Minute 2225, Meeting No. 193, held May 9, 1946. In re Agreement with No. 408 as amended. Chairman reported that new agreement previously circulated to supersede and cancel Agreement—" I think that should be 48—"as amended, was signed and sent on May 1, 1946 to the United States Maritime Commission for approval pursuant to Section 15 of the Shipping Act of 1916."

Q. Well, I was going to ask you what Agreement No. 408 was? You say now it may be 48.

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A. I am not sure. I would have to look up that agreement number. It doesn't register with me at the moment.

Q. Well, you said that 4490 filed in 1935 succeeded 48.

A. Let me see——

Q. Now, you are talking now about 1946.

A. No, Agreement 408 is correct. If you will refer back to the minute of April 4, 1946, that deals with a tramp ship agreement to protect the rates of the Adriatic/Black [fol. 1557] Sea/Levant Conference on tramp shipments to Continental or French-Atlantic ports. It has nothing to do with the basic agreement in the Continental trade.

Q. Now, will you read Item 2226 of May 9th?

A. 2226: "Request for tariff and corrections by Orbis Steamship Corporation (Arnold Bernstein Shipping Company, Inc., General Agents) was not approved. However, in view of the expressed desire of Orbis Steamship Corporation to maintain Conference rates, Conference Office may furnish on request by telephone information as to current rates."

Q. In other words, you had an understanding with the Bernstein Line that they would maintain Conference rates, is that it?

A. We had no understanding with Bernstein to maintain our rates.

Q. Well, isn't that actually what is in there?

A. He merely expressed a desire to maintain Conference rates, and the Conference members authorized me, when they telephoned for rates, to give them. As a matter of fact, when Isbrandtsen was maintaining our rates, they telephoned our office a number of times, and we gave them the rate.

Q. Isn't it a fact that you have had understandings with operators in that trade who were not members of your Conference that they would maintain the Conference rates? [fol. 1558] A. We have no understandings which are not on file and approved by the United States Maritime Commission.

Q. Well, if you had such an understanding with one of these carriers, like Bernstein, would you file that with the Maritime Commission?

A. Very definitely, I would file it.

Q. If it were an oral understanding, would you make a note of it and record in the Maritime Commission?

Mr. Galland: Mr. Examiner, this isn't what this case is about. I haven't any objection in principle to the information coming out, except it is taking time about matters that are just not being litigated.

Examiner Robinson: I don't see the relevancy of this.

Mr. O'Connor: It is the operation of this Conference in this trade and its effect on this complaint, and we are going into——

Examiner Robinson: I know, but I don't see that whether or not he files an agreement with the Commission or an understanding, has anything to do with it. I am perfectly willing to let you pursue anything that is reasonable or relevant.

Mr. O'Connor: The whole operation of this Conference, as far as we are concerned, is material.

Mr. Galland: No, you are not on a general fishing expe- [fol. 1559] dition as to whether he obeys all the laws there are. You are complaining about his exclusive patronage contract system.

Mr. O'Connor: Well, here he has an arrangement with carriers, another carrier to maintain the same rates as if this carrier were a member of the Conference. That is all I am trying to find out.

If the counsel for the Maritime Commission, who stated in the beginning he was here to protect the public interests, wants to continue, and all he has done in this hearing is to ask questions favorable and intended so for the Conference, and the Examiner sustains his objections so I can do nothing but take an exception.

Examiner Robinson: Now, let's get something on this record straight. I don't think anybody can accuse me of sustaining anybody's objections on one side any more than on the other, and I hope you don't intend that.

Mr. O'Connor: Well, I mean, finding out how this conference operates in this trade is very material to this hearing.

Examiner Robinson: I will grant you that, and I think I have been very indulgent on both sides, perfectly so, probably more so than I would in a normal case.

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Mr. O'Connor: If they have agreements with other operators which are not disclosed by an inspection of their minutes, and they are not on record with the Maritime [fol. 1560] Commission, we are rendering a public service by exposing it in this hearing.

Examiner Robinson: I think that is rather far-fetched in this particular proceeding. If you want to make a complaint to the Commission, that is a matter for you to consider.

The Witness: If I may help the record, I may say we havn't received a telephone call from Orbis Steamship Company or Bernstein in two years for rates.

Mr. Hupper: Mr. Examiner, I would like to note on the record here without complaint that I believe you overruled every single objection of mine.

Mr. McDowell: I think I may join you in that.

Mr. Galland: I will go along with that myself.

Mr. O'Connor: That wouldn't apply at the precise moment to the objection raised now by the Maritime Commission lawyer.

Examiner Robinson: No, but I don't think it has any relevancy, Mr. O'Connor.

Let's have a short adjournment.

(A short recess was taken.)

Examiner Robinson: All right.

By Mr. O'Connor:

Q. Mr. Andrews, earlier in the hearing in connection with, it may have been your testimony, or some other wit- [fol. 1561] ness, or some statement made by Mr. Hupper, reference was made to the voting rule of this Conference, and as I understand the Conference agreement it provides for a majority vote—unanimous vote providing a majority is present; is that a correct statement?

A. Providing a majority is present constituting a quorum at a regularly called meeting.

Q. Now, it is a fact, isn't it, that at several meetings beginning on October 10, 1946 the subject of changing the voting rule to a majority of two-thirds vote was considered?

Mr. Galland: I note the same objection that I noted before the recess, that I don't think the voting provisions of the agreement are under attack, or if they are, I don't think that the Conference deliberations relative to possible changes in voting rules are of any possible materiality.

Examiner Robinson: Well, the voting issues have been injected, and I hate to use the word so much, but it is so interwoven with all these points, I don't see how we can stop it now.

Mr. Galland: We know what it is, but whether they deliberated over changing it, it doesn't seem to me, makes any difference.

Mr. O'Connor: It may not make any difference to you [fol. 1562] representing the Maritime Commission, but it makes quite a little difference to us representing somebody on the outside of the Maritime Commission.

As we have said in the beginning, we don't know in what capacity you are here. You are not entitled to be here under the Administrative Procedure Act, certainly, and you stated at the hearing in Washington in the beginning that you appeared somewhat in the public interest, that you would not advise the Maritime Commission or the Examiner, you would not participate at all except to sit and watch the proceedings from the public interest standpoint.

Mr. Galland: No, I didn't say that.

Mr. O'Connor: You said——

Examiner Robinson: Well, I don't think we need to go into the record. You go ahead, Mr. O'Connor.

Mr. O'Connor: Well, it appears to be difficult to find out——

Examiner Robinson: We don't have to worry as long as you can ask your questions.

By Mr. O'Connor:

Q. On several occasions, did you not discuss changing the voting rule? I refer you to October 10th, the meeting October 10, 1946.

A. October 10, 1946; yes, the question of amending the basic Conference agreement No. 4490 to provide for two-

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thirds majority action for the adoption of any matter, [fol. 1563] was continued on docket.

Q. Was that taken up again at the meeting of November 14th, of that year, page 5?

A. Page 5, November 15th?

Q. November 14, 1946—no, no, I am wrong about that; December 12, 1946, page 3.

A. Yes, the question was still on the docket and was conntinued on the docket.

Q. And January 16, 1947?

A. Still before the lines.

Q. Had anything ever been done about it?

A. No change was agreed upon, and the subject eventually was dropped from the docket, and the record in that respect is covered by the minutes of the meeting held on March 6, 1947, and it reads:

"Question of amending basic Conference agreement No. 4490 as amended to provide for two-thirds of majority action for the adoption of any measure was tabled."

That is about the same thing as putting it in File 13, which never comes up on a docket again.

Q. Something was said here by you, I am quite sure, about keeping the Agricultural Department advised as to your tariff schedules. Do you recall that?

[fol. 1564] A. Yes, I do, and as a matter of fact, I looked it up just to confirm my recollection. I can produce it. I have the file.

Mr. Galland: I repeat, I am completely mystified as to how this bears on the case.

Mr. O'Connor: I didn't bring it up in the first instance.

Examiner Robinson: No.

Mr. Galland: That is why I am mystified as to why it is relevant.

By Mr. O'Connor:

Q. I ask you to turn to the minutes of November 14, 1946, page 5.

A. Yes.

Q. And read the item there in reference to the Agricultural Department.

A. "Request for tariff by the United States Department of Agriculture, Washington, D. C., was approved."

[fol. 1565] Q. Have you fixed the date when the conference agreed on reducing the tariff on tobacco from some $3.10 to $2.25 and $2.00? Did you fix the date when the conference agreed on that?

A. Fixed the date? From what basis to what basis?

Q. From the old basis of $3.00 and $3.10, as I recall it, to the basis of $2.00 and $2.25?

A. Yes, I gave you that.

Q. Is that the reference—turn to your minutes of 1948, September 16th, pages 2 and 3, and will you read that?

A. "Tobacco, unmanufactured, cigarettes, chairman advised that at the invitation of the traffic advisory committee of the tobacco association of the United States, he met with that committee on September 9th, 1948 in Richmond, Virginia. A full report was then made by the chairman of the Views and Proposals of the Committee on the subject it*mes*. Following discussion and a pool of the member lines, the chairman was directed to obtain and convey to the Traffic Advisory Committee the appreciation of the carriers for its courtesy and proposals, which for reasons already explained by the chairman could not be accepted. The chairman, however, was authorized to reach a mutual understanding under a contract basis with the Traffic Advisory Committee of the Tobacco Association."

Q. Well, then, at that particular date your new rates [fol. 1566] had not been fixed, had they?

A. No, they had not been fixed at that time.

Q. Now, following that, on what date were they fixed?

A. I believe the date was October 28th, and so stated in the minutes.

Q. That is on page 3, isn't it?

A. Page 3 of the meeting held October 28, 1948. The Tobacco Committee made a firm offer of their agreement to recommend to their exporting members acceptance of certain contracting rates. I took that firm offer up with the lines, and it was accepted, and a report was made in the minutes on October 28, 1948, which reads: "Chairman reported acceptance of proposal by the Traffic Advisory Committee of the Tobacco Association of the United States at the following contract rates," and it lists the rates.

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Mr. O'Connor: That is all.

Examiner Robinson: Mr. McDowell, or Mr. Cockrum?

Mr. Cockrum: I have just a couple of short questions, Mr. Examiner.

By Mr. Cockrum:

Q. Referring again to the minutes of the meeting of September 16, 1948, Mr. Andrews, you say that a full report was made by you of the views and proposals of the Advisory Committee of the Tobacco Association of the United States. What were those views and proposals of the committee as of that date?

[fol. 1567] A. Basically they offered to, they made a firm offer to recommend to their exporting members the acceptance of contracts on the basis of $2.00 to Antwerp and Rotterdam and $2.25 to Hamburg and Bremen on unmanufactured tobacco in hogsheads and tiecers.

Q. Those views and proposals were unacceptable to the conference?

A. They were acceptable, and we accepted their firm offer.

Q. Well, the minutes, the next sentence in that——

A. No, I am ahead of you. I am thinking of October 28th.

Q. I was thinking of the September 16th——

A. They made several offers, which I took back to the lines, and made a verbal report, and they asked me to thank the committee for, and explain to the committee they were not acceptable, and to pursue the matter further, which I did, and we finally reached a meeting of the minds.

Q. Those are the views and proposals of the Advisory Committee of the Tobacco Association to which I am referring. What were those, as reported in your September 16, 1948 minutes?

A. Well, they wanted a rate of $2 to all continental ports, that is Antwerp, Rotterdam, Amsterdam, and $2 to Hamburg and Bremen.

Q. Those rates were unacceptable to the conference lines?

A. They were not acceptable.

Q. The conference lines instructed you, then, to reply

to the association in substance to the effect that you would [fol. 1568] be willing to reach an agreement with the association on an exclusive patronage contract basis?

A. On a mutually satisfactory basis under a contract.

Q. Under an exclusive patronage contract?

A. The regular contract form to ship their business on the lines mentioned in the form.

Q. All of their business?

A. No, I said the Traffic Advisory Committee made a firm offer to unanimously agree to recommend to its exporting members. I don't believe all of the exporting members came along.

Examiner Robinson: Well, I don't think the question and answer coincide. You want to know whether or not it included all shipments of whatever kind?

Mr. Cockrum: That's right.

Examiner Robinson: Not whether it embraced all shippers.

Mr. Cockrum: All shipments.

The Witness: It covered all of their shipments, whether they shipped tobacco or whether they shipped peanuts, or anything else. It is a regular all-inclusive contract. But we term it as our tobacco agreement because it is going to the tobacco exporting members.

By Mr. Cockrum:

Q. I presume in the formulation of this contract which has been identified as Exhibit 14, which was prepared by [fol. 1569] you and others associated with you, including your counsel, and then distributed far and wide to the shipping public——

A. It was a continuation of the form previously in effect pre-war and modified to cover the current conditions and certain changes in those conditions dealing with the decision in Docket 648, all of which were passed on by conference counsel and subsequently adopted by the members at a meeting. And in accordance with their instructions, conference offers were made to all shippers and receivers of record.

Q. Subsequent to the formulation of the contract?

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A. That's right. They went out on or about October 1st.

Q. The question has been presented, Mr. Andrews, with respect to whom in the Department of Agriculture that you have been sending your tariffs—Mr. Turner testified that he chekced shortly before the beginning of the hearing in the tariff room of the Department, and they had no copies of your tariffs. Will you state for the record to whom you sent those tariffs?

A. Yes, I will be very glad to. The original request came from Mr. W. T. Reed, Acting Chief, Shipping Division, United States Department of Agriculture, Production and Marketing Administration, Shipping and Storage Branch, Washington, D. C., and was dated October 23, 1946.

I acknowledged the letter under date of October 24, and told him I was placing it before the member lines, [fol. 1570] and promptly thereafter he would be duly advised of the lines' action on the matter. I took it up at a meeting of the lines, and they approved their request. I advised them under date of November 15th, 1946 to this effect:

"At recent meeting of the United Kingdom and Continental Lines, your request of October 23, 1946, file ss/sh/rr/ejs for copies of these tariffs was approved. If you will send us a supply of your self-addressed franked envelopes, large and small size, we will be glad to send you the tariffs requested."

They furnished us with those franks, and I have a copy here, in case you care to have it.

Examiner Robinson: When you mention the address, didn't you leave out South Building? Don't they have South Building on that, too?

The Witness: Not on the original letter. On the frank, it has.

Mr. McDowell: Didn't you ask them to furnish the paper, too, Mr. Andrews?

Mr. Andrews: No, we furnish that free.

Mr. O'Connor: Don't you give the tariff schedule to anybody who asks for them?

The Witness: No, we don't.

Mr. O'Connor: They are on file down at the Maritime [fol. 1571] Commission?

The Witness: They are on file for public inspection there.

By Mr. Cockrum:

Q. I am wondering one thing further, Mr. Andrews. Can you tell us for the record how the number of vessels operated by the American members, United States members of the conference is compared with the number of vessels operated by the foreign members?

Examiner Robinson: Well, you have already got your schedule.

The Witness: It is right in the record.

Examiner Robinson: For three years.

Mr. McGovern: Not by vessels.

Examiner Robinson: It doesn't make any difference. It does give you the number of sailings. What is the difference what the number of vessels may be?

Mr. McGovern: He asked the question. I don't know. I say we haven't got the number of vessels.

Examiner Robinson: He could look that up. But you have got your sailings scheduled.

Mr. Cockrum: I wonder if you could estimate for me?

The Witness: I couldn't tell you. I would have to go back to 10 years ago, which would cause a little difficulty.

Mr. Cockrum: No, I had in mind '47-'48.

[fol. 1572] Examiner Robinson: You have got the number of sailings they made. I don't think it makes any difference how many ships they had. If you can show me some relevancy, that is another thing, but I don't imagine you can. I don't mean that in a mean way, but——

Mr. Cockrum: That is all, Mr. Examiner.

Examiner Robinson: Mr. McDowell.

Mr. McDowell: No questions.

Examiner Robinson: Mr. Galland.

By Mr. Galland:

Q. Now, Mr. Andrews, you testified in answer to a question by Mr. McGovern that the conference shipper contract is an all-shipment contract, by which I understood

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you to mean that it applies to full ship-load cargoes as well as to shipments in liner service, is that right?

A. It is an all-shipment contract.

Q. Does the shipper get anything in return for signing the contract with respect to shipments other than shipments by a liner service?

A. The only commodity, if I may express myself a bit that might move in charter lots or full shiploads in this trade is probably grain, oil, and probably coal. Those items are excepted from contract and are so specified in the tariff.

Q. They are excepted from the contract?

A. The contract doesn't cover those. So if a shipper had a full tanker it would not cover that full tanker, so [fol. 1573] to speak, because he is excepted from his contract, and the oil people have been so notified.

Q. Are there any other commodities?

A. That is about the only ones I know of that might move in this trade in full shipments.

Q. Now, what I am trying to find out specifically, maybe you have answered it, I am not sure, is whether the shipper is tied up under this contract to give the conference his business on any commodities to which contract rates do not apply?

A. It covers all of his shipments excepting the items specified under the rule and the tariff dealing with contract rates.

[fol. 1574] Q. Does anything actually move in shipload lots as to which the shipper is bound to give the business to the Conference but gets nothing in return even in the way of a contract rate?

A. I don't know that offhand.

Q. You don't know of anything actually moving?

A. The only thing I do know is dealing with the oil question, which I have just explained.

Q. Now, on the question of the unanimous voting rule, I think the answer to this question is pretty obvious, but I would like to ask it to get the record complete.

Isn't it true that the unanimous voting rule enables a United States flag member of the Conference to protect itself by exercise of a veto power to the same extent that

it enables the foreign flag carriers to block a proposal of a United States flag carrier by the exercise of that veto?

A. That is correct.

Q. Now, if you can do it, I would appreciate your describing somewhat more completely than you have done so far what the specific conditions were as far as you know that prompted the decision to re-impose the contract system in the trade that we are talking about in this case.

A. Well, it is something that has been in effect in this case for a good many years.

[fol. 1575] Q. And then after the war you got along without it for quite a time?

A. If the war hadn't come along, that contract system would still have been in effect. The war broke out, the Low Countries were stormed, and the contract rates, all contracts with merchants were cancelled. That was in June 1940. The early part of '46 the question was before the lines on the re-establishment of the contract system, and we had certain other problems reflecting some consideration on the contract form, in that the Canadian Lines withdrew from the Conference and set up their own organization in Montreal, because it was anticipated that, and I think it had become a reality, that there was going to be a Canadian Maritime Commission up there, and they just didn't want to be under the jurisdictions of two Commissions, and they also felt that they were a growing maritime nation, and they withdrew and set up their own Conference.

We worked out a cooperative arrangement with them, and during that time of withdrawal and drawing up the cooperative rate agreement, the contract-non-contract system was more or less pushed aside until we got those basic things out of the way.

After we got the agreement approved, then we drew up this present contract form which embraces Canadian ports as well.

[fol. 1576] Q. Would it be a fair statement that the Conference rate system wasn't felt to be necessary in the years immediately after World War II because there was so much cargo moving that the lines didn't feel that there was any great excessive downward pressure on the rates?

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A. That wasn't the reason. Most of the cargo that moved right after the cessation of hostilities were for foreign government accounts and shipped by the various governmental agencies, and as you know, most of these governments on the other side, the sovereign governments, will not sign any contracts—I mean, those lines formerly under the jurisdiction of those governments—it would be out of one pocket and into the other, because they are all government controlled.

When the practice returned to some sort of normalcy and commercial business started to move and generate, the lines then gave consideration to the re-establishment of their contract system.

Q. Well, now, when private cargo began to move, and I understand that a good bit of ECA cargo is private cargo now, isn't that correct?

A. That is my understanding.

Q. When private cargo began to move, did the Conference Lines feel an increasing pressure of independent competition tending to drive down the rates?

[fol. 1577] A. Oh, yes, they were aware of the reductions being made by the outside lines.

Q. And when did they begin to feel those reductions?

A. I should say around '46, some time. I am not sure of the date—'46 and '47.

Q. And the Isbrandtsen Company was one of the outside companies whose pressure was felt, is that correct?

A. That is correct.

Q. Were there any occurrences in the period immediately preceding November 1, 1948 which made the Conference feel that the adoption, the re-adoption of the contract rate system was especially imperative at that time?

A. Very definitely.

Q. What were those occurrences?

A. Tobacco, tires, milk, others which I can't recall at the moment, but have been covered in the minutes here.

Q. Was the Isbrandtsen Company the independent competitor whose competition was principally felt by the Conference Lines on those commodities?

A. We feel the competition of all outside lines.

Q. Well, can you answer my question any more definitely

than that? Is the Isbrandtsen Company the principal indepen-t competitor of the Conference?

A. I don't like to particularize "principal." They are one of the outside lines.

[fol. 1578] Q. I don't want you to say if you don't know, but I do want you to say if you do know.

A. A very important outside line.

Q. You testified when you first went on the witness stand, and I think you referred to it again today, that the names of shippers requesting rate adjustments are withheld from the member lines. You mean by that that you are the only person in the Conference who knows the identity of those shippers?

A. That is not correct. I testified to our method or procedure in placing rate applications before the Rate Committee, who make recommendations, we put all of the rate factor in there, but we don't mention names of shippers.

Q. Even to the members of the Rate Committee?

A. Even to the members of the Rate Committee, and we feel, of course, if they ask who it was, I would be very glad to tell them, but we feel it is on sound ground if the Rate Committee and its members deal solely with the rate factors, and regardless of whether he is a friend of this particular line, or whether he is a big or small shipper, he should deal with the factors in the case solely.

Q. In order to keep out of the proceedings, as far as possible, personal considerations and considerations based upon the comparative bargaining power of different ship-[fol. 1579] pers is that right?

A. That is one of the purposes of handling in that way.

Q. Does the Rate Committee have final authority, or do they——

A. No. The Rate Committee has no authority. They merely study and make recommendations.

Q. To their principals?

A. To the General Conference, and the Conference members vote on the rates.

Q. Now, you testified that the Government does not sign contracts, but gets contract rates. Do you regard your practice of allowing contract rates to the Government with-

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out its signing a contract as being prejudicial to the interests of private shippers?

A. I don't think it is.

Q. Go ahead and say why you think it isn't.

A. The request was made to put this before the membership, and a provision was inserted in the tariff that contract rates will be accorded to the Governmental Departments or Agencies without signing the contract rate agreement. It was put before the lines, and the membership thought it was a reasonable tariff regulation, and adopted it.

Examiner Robinson: In other words, when the Government ships, it is assumed, I suppose, that they are not competing with anybody else.

[fol. 1580] The Witness: I think that is a reasonable assumption.

By Mr. Galland:

Q. Is that an assumption on which the determination was made basically?

A. No, because some of the sovereign governments won't sign contracts. They are not in a position to sign them.

Mr. Galland: That is all I have, Mr. Andrews.

Mr. Hupper: I don't desire to ask Mr. Andrews any questions, but in view of the comment that was made a while back as to the number of sailings, and so forth, I would just like to note on the record at this point that in the record, in the transcript of May 12th, page 561, and the transcript of May 24th, on page 810, the number of sailings for the year 1938, 1947 and 1948 are in the record.

By Mr. O'Connor:

Q. Mr. Andrews, the United States Government is one of those sovereign governments that doesn't sign contracts, too, isn't it?

A. I don't know whether they would sign them or not, as a matter of fact.

Q. Well, you have never known of the Government, or

one of its Bureaus, signing one of these contract-non-contract forms, have you?

[fol. 1581] A. They haven't signed any of ours.

Mr. Galland: I meant my questions to refer to the Government of the United States.

The Witness: And to the best of my knowledge, we haven't sent them any contract form, and if by chance it did go to them, it was*n't* because it was properly screened in our office.

By Mr. O'Connor:

Q. There is one item I neglected to ask you about. Will you turn to your minutes here of 1948, January 15th page 3.

A. January 1948?

Q. Yes, January 15th.

A. Yes.

Q. Read the item about relief goods, will you please?

A. "Relief goods. Gifts food parcels: The following emergency rates and classification will be accorded shippers who consign all their shipments to Conference Lines. Food packages, composite relief stockpile shipments in wooden cases, cartons, or bales for War Famine Relief to Antwerp, Rotterdam, and Amsterdam, $1.35 per 100 pounds, Hamburg and Bremen $1.50."

Q. Is that the whole item?

A. Well, I presume that is what you are referring to, Mr. O'Connor. (Handing a document to Mr. O'Connor).

[fol. 1582] Mr. O'Connor: Yes, that's right. That is all.

Examiner Robinson: Are there any further questions?

Mr. Hupper: Thank you, Mr. Andrews.

Mr. McGovern: Just to clear up the record, Mr. Andrews, I would like to ask one question.

By Mr. McGovern:

Q. In response to a question from me as to whether or not if General Motors signed a conference contract and subsequently sought to ship a full cargo of coal to one of their plants in Holland or Belgium, my recollection you said that shipment would fall under the contract.

A. It would technically fall under the contract, but I believe the rate on—I haven't got the tariff——

Mr. Galland: Is there a contract rate on coal?

The Witness: I don't think so.

Mr. McGovern: That is the point I am coming to.

The Witness: I testified—I may have overlooked the fact it would be excepted under the contract.

By Mr. McGovern:

Q. Now, if it were pig iron instead of coal, it would fall under the contract?

A. It would fall under the contract. It is only where the items are excepted under the contract conditions, and so stated in the tariff.

[fol. 1583] But aside from that, full cargo items are covered in the tariff?

A. Full cargo items are covered in the tariff.

[fol. 1584] Q. One other question. I noticed on the face of the minutes, in addition to the refusal to supply your tariff to this Orbis Steamship Company, you also declined to furnish them to Compagnie Generale Transatlantique, I believe, in Montreal, Canada?

A. I believe they are a freight broker.

Q. Whatever they are, why is it that the conference does not furnish its tariffs upon request from certain shippers? Is that really a matter of cost involved?

A. That is a matter up to the lines. I would like very much to see our tariffs broadcasted, but as I previously testified, I don't have any vote on these matters. It would simplify our work a great deal if the tariffs were sent out to everybody, but I work for the lines, and they don't see fit to make a public distribution or sale of their tariffs.

Q. Well, in view of the fact that you asked the Department of Agriculture to furnish you franked envelopes, I was wondering if the question of cost was the principle reason?

A. No. As a matter of fact, I wanted to assure ourselves that it went to the proper party, and inasmuch as the other Government agencies who had previously sent franks, I thought it would be a good thing to have those franks in the office.

Mr. O'Connor: Don't you have them addressed to John Jones in the Department of Agriculture?

The Witness: Are you objecting to my procedure, the [fol. 1585] way we are handling it?

Mr. O'Connor: Well, I haven't had a satisfactory explanation of it.

The Witness: The Department of Agriculture is quite satisfied.

Mr. Galland: I might indicate for the record and for Mr. McGovern's information that the practices of conferences relative to the distribution of tariffs is one that is quite frequently raised, and I think that a recommendation to the Maritime Commission for an investigation to cover that subject under the conference practice is relative to it and will probably be submitted in the near future.

The Witness: Does that apply to non-conference lines as well?

Mr. Galland: Well, since it hasn't been drafted yet, I can't tell you what form it will take. I would rather say the accessibility of the steamship tariff to the public is the question.

The Witness: I just want to state for the record our tariffs are open for inspection to all shippers and all brokers, anybody who wants to look at the tariff. It is in our office, or the office of the various lines located throughout the country here and abroad.

Mr. Hupper: Have you received any request from Mr. McDowell, with a frank?

[fol. 1586] Mr. McDowell: The Department of Justice doesn't send out franks, Mr. Hupper.

The Witness: That is part of the Treasury Department, isn't it?

Mr. McDowell: It is the Department of Justice.

The Witness: It is part of the Treasury Department?

Mr. McDowell: No.

The Witness: I just want to say the Treasury Department gets a copy of the tariff.

Examiner Robinson: I just want to put myself on the record and say I know the Maritime Commission does, because I have done it for them, get tariffs. I don't mean the ones that have to be filed.

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Mr. Cockrum: Mr. Examiner, my only point in bringing that question up was the fact that Mr. Turner testified he checked with the Department Tariff room and they weren't on file.

Examiner Robinson: I think we all understand that.

(Witness excused.)

Robert C. Lee was sworn and testified as follows:

Direct examination.

By Mr. Hupper:

Q. Commodore Lee, will you kindly state your full name and address?

[fol. 1587] A. Robert C. Lee, 5 Broadway, New York.

Q. Have you come here at my request to be a witness in this case?

A. Yes, sir.

Q. What business are you in?

A. Executive vice-president of Moore-MacCormick.

Q. Is that a common carrier?

A. Yes, sir.

Q. How long have you been with that company?

A. Since 1920.

Q. Where were you before that?

A. With the United States Navy.

Q. How many years were you in the Navy?

A. Since 1906.

Q. Have you had anything to do with the common carrier affairs of Moore-MacCormick during the period 1920 to date?

A. Well, I have been one of the principal executives of the line since I joined it.

Q. Will you kindly give us a brief summary of the activities you carried on and the various trades in which you did carry them on?

A. Well, when I joined the line we were operators of rather a large fleet of foreign flag ships, and a considerable fleet of American flag ships under what was known as the MO-4 agreement. We didn't own the American flag ships.

[fol. 1588] We were operating to Scandanavia, the Mediterranean, to India, to South America, and the Far East.

Q. A considerable number of trades?

A. Too many.

Q. Were those operations that you mentioned carried on as a member of the conference on the part of Moore-MacCormick?

A. No, we were on a so-called non-conference for independent operators in the early days.

Q. How long did that early-day period last?

A. Oh, I should say about five years.

Q. And about what year, if you recall, did Moore-MacCormick join conferences?

A. We went to Scandinavia I think in about 1925, and began conversations with our Scandinavian competitors on the advisability of stopping what we were doing at the time.

Q. What was that?

A. Well, we were trying to kill each other.

Q. Did you succeed very well?

A. Well, I was not very happy, and I could see they were slightly depressed too by the situation, and it seemed to me that the best interest for all of us was to settle on a somewhat friendly basis, if that were possible, and I went to Scandinavia and talked to the leaders of the lines. Mr. MacCormick went with me, and it is a long time ago, but from that, and very soon thereafter some of them came [fol. 1589] to the United States and we met and formed a Scandinavian conference.

Q. Made an agreement, I suppose?

A. Yes, sir.

Q. Filed with the Maritime Commission, or the Shipping Board then?

A. Absolutely.

Q. Approved?

A. Approved, certainly.

[fol. 1590] Q. Well, I gather from what you said a moment ago that the reason Moore-MacCormick became interested in joining, and did join, the Conference was the character and result of the rather broad competition that was going on theretofore.

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A. Well, the competition decreased a great deal, but our policy had rather begun to change. We were veering toward American flag operation exclusively, and as we read the law, the best protection for the American operator is under the Act of 1916, which provides, allows Conferences, as to which the Government of the United States by means of the Maritime Commission, has some say over what the practices are in the offshore shipping business.

Mr. McGovern: May I interject at this point, Mr. Examiner? I am not prepared to object yet because I haven't heard all the qualifications of this witness in the North Atlantic Continental Freight trade, but I don't think he ought to talk about the Conference contract system until we have had some further qualification of his experience in this trade.

Mr. Hupper: You will find he is pretty — qualified in the Conference rate system. I have to lead up to it.

Examiner Robinson: Well, let's go ahead.

Mr. McGovern: He is now testifying about the Conference system.

[fol. 1591] The Witness: I beg your pardon, I am testifying in answer to his question about how I came to join the Conference and why I joined it.

Mr. O'Connor: I object to the "why".

The Witness: If you don't want to know why——

Examiner Robinson: Let's go ahead and let him answer, and you have a right to object to the proceedings afterwards.

By Mr. Hupper:

Q. Did you join the Conference?

A. We joined the Conference because we were going under American flag operation, and I believed it was the only protection that we had.

Q. Well, did you consider that the Conference system contained certain elements of stability?

A. Absolutely. It was the only element of stability that was possible.

Q. Well, describe that a little bit more for us.

A. Well, if you don't have a Conference and you are not agreed in a trade——

Mr. McGovern: Now, Mr. Examiner, I object, if the witness please, for a moment. I assume he is now going to explain why he had to have, in his judgment, a Scandinavian Conference——

The Witness: Whose judgment do you want me to use? [fol. 1592] Mr. McGovern: Just a moment, I am making my objection to the Examiner.

I am not saying he is incompetent to testify as to why he formed the Scandinavian Conference, but I certainly am now objecting to any relevancy in this proceeding as to why or wherever there should be a Scandinavian Conference. I cannot see the application of this to the issue here.

Examiner Robinson: I understand your point and the relevancy of it, but I think his underlying testimony should be allowed at the present moment.

Mr. O'Connor: Can't we find out in the beginning whether or not he had any interest in the North Atlantic Continental Conference?

Examiner Robinson: Well, unfortunately, I can't tell Mr. Hupper what questions to ask. You will have plenty of opportunity to bring that out.

Mr. O'Connor: Well, I think it——

The Witness: May I reply to that?

Examiner Robinson: No, I am not going to plead his case for him. You are capable of doing that. I think you can get everything out on cross-examination.

By Mr. Hupper:

Q. Has Moore-MacCormick joined various other Conferences in the several trades you mentioned?

A. We belong to all conferences in all trades that we [fol. 1593] operate, and we belong to the North Atlantic Conference, Associate Member, observe their rates.

Mr. McGovern: May I interject again; I didn't hear the answer to that, Commander. Did you say you were in the North Atlantic Continental Freight Conference?

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The Witness: We are not active members, because we are not in that particular trade, but we have an agreement with them, certified agreement.

Mr. O'Connor: That is easily ascertained from the record here of the Maritime Commission, Mr. Examiner.

Examiner Robinson: Well, it is just as easy for him to answer.

Mr. O'Connor: And I submit to you that Moore-MacCormick is not listed there in any sense at all, in the record of the Maritime Commission (indicating a document).

Examiner Robinson: Well, I can't refute what it says. You bring it out. It is not up to me. Proceed.

Mr. Hupper: We will proceed the best we can, and then you will have full opportunity to cross-examine. I am not going to be very long.

By Mr. Hupper:

Q. What has been the reason that motivated Moore-MacCormick to join the Conferences in the several trades you mentioned and to become an Associate Member of the North Atlantic Continental Freight Conference?

[fol. 1594] Mr. McGovern: I object to that question in so far as to why he joined it. He can't testify as to why he joined.

Examiner Robinson: I appreciate your position, and I understand it, but I will overrule the objection.

Mr. Hupper: Kindly read the question.

Mr. McGovern: But Mr. Examiner——

Examiner Robinson: Just a moment, Mr. McGovern, just so we don't misunderstand each other. I know what you are driving at. I see the inadequacy from your point of view, but I still think the testimony at this stage is sufficiently relative to bring it in.

Now, whether or not it is going to be overwhelmingly against you or for you, I don't know at the moment.

Mr. McGovern: I am not questioning the direct testimony, whether Mr. Lee testifies one way or the other; what I am suggesting to you is this, that the issues here are confined to this North Atlantic Continental Freight Conference.

Examiner Robinson: I say, I appreciate your point——

Mr. McGovern: I want to make a broader point. There is no way I can cross-examine him as to what conditions are in the Scandinavian trade, and I expect to be able to test his credibility——

Examiner Robinson: You can ask him any questions [fol. 1595] you want——

Mr. McGovern: But the issue is this North Atlantic Continental Freight Conference——

Examiner Robinson: I appreciate that.

Mr. McGovern: Are we going to call witnesses on the Pacific Conference, too——

Examiner Robinson: You wait and see what you get on cross-examination. You can ask anything you want.

Mr. O'Connor: Mr. Examiner, he is not——

Examiner Robinson: Proceed, Mr. Hupper, please.

Mr. O'Connor: May I, on the record, according to the official records of the Maritime Commission, say that Moore-MacCormick appears to be neither a member nor an associate member of the North Atlantic Continental Freight Conference.

Examiner Robinson: That may be true.

Mr. O'Connor: And it is just as sensible to come in here from India, the India Conference, and examine them.

Mr. O'Connor (continuing): That has no relation to the United States, to ask him what he thinks the North Atlantic Conference——

Examiner Robinson: Proceed, Mr. Hupper.

Mr. McDowell: Mr. Examiner, isn't there a further question here—I think we ought to have this on the record at the same time as to the relevancy of testimony with re- [fol. 1596] spect to his reasons for joining a Conference. There is no issue in this case as to the legality and propriety of the Conference or the Conference system.

Examiner Robinson: Yes, but based on all the testimony so far, I assume that he has to take it step by step. Now, the Conference rate system, as I mentioned the other day, doesn't come into play unless you get into the Conference.

Mr. McDowell: Well, he said he is a member of the Conference now. Is there any reason for going into why he joined it?

Examiner Robinson: I am sure he is going to bring out

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something on the contract rate system. Let us let him continue.

Mr. McDowell: I don't object to that, but it is only as to the relevancy, as to why he should join the Conference.

The Witness: May I see that? (Indicating a document). What is the date of that? Certainly we are members of the Conference many years.

Mr. O'Connor: This is the latest book issued as of February 1, this year (handing the document to the witness).

The Witness: I am sure you will find we are attached to that Conference.

[fol. 1597] Mr. O'Connor: Well, the Associate Members are listed in other Conferences, and he is not in the contract form.

The Witness: I can't remember all these things, but I know we belong to it for many years. I don't know when we got out.

Mr. Hupper: Probably during the war.

By Mr. Hupper:

Q. We will start now with the provision, Commodore Lee, that your Moore-MacCormick Company is a member of various conferences.

A. Yes, sir.

Q. Now, kindly tell us whether or not in those several Conferences of which your company is a member, the so-called contract-non-contract rate system is practiced?

A. It is practiced in all of them.

Q. What is the purpose of that contract rate system?

A. To protect the Conference. Otherwise, there wouldn't be a contract.

Q. How is that?

A. A Conference, examinations of Conferences and their practices for the last 80 years discloses there are three protective devices for a Conference, and the only protective device that we are allowed to use is the contract system. Without that protection there could not be Conferences. [fol. 1598] There wouldn't be any sense to them.

Q. Well, no sense, what do you mean by that?

A. I mean, what would be the objective of a Conference if it weren't to stabilize rates? That is the purpose of a

Conference, that is the reason for them. There is no other reason for them.

Q. What do you mean by stabilization of rates in relation to the contract-non-contract rate system? Perhaps I can make my question——

A. I am not quite sure just exactly what you mean.

Q. —a bit clearer. Under a contract-non-contract rate system as practiced by Conference members, is it or is it not true that the existence of that rate making method assures each member of the Conference that every other member of the Conference is charging that same rate to various shippers?

A. That is correct.

Q. Is it, or is it not true that that method of rate making produces a very great degree of stability, so-called?

A. It produces almost complete stability except in unusual instances where something happens, where a new contract rate has to be arrived at because of the change of the situation.

Q. But assuming——

A. Assuming a normal flow of events, the contract produces absolute stability so far as the members of the Con- [fol. 1599] ference are concerned.

Q. Are there some benefits of the contract rate system to shippers in general, do you know?

A. Well, if there weren't, it would be impossible to maintain the Conference or a contract. There is obviously a great advantage to all shippers, but primarily to the smaller shipper. There might be two, or three, of the larger shippers who would do better in an open market, but 90 per cent of the shippers are benefited by the Conference and contract system.

Q. Well, is that because any shipper, irrespective of his financial strength, or the volume of his shipments, is assured of the——

A. Same rate.

Q. —same rate in competition?

A. He gets the same rate as the shipper with 100,000 tons, a shipper of 10 tons gets the same treatment, the same identical rate.

[fol. 1600] Q. In other words, there is no discrimination

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as between shippers and no discrimination as between the lines that are cooperating in conferences with that contract rate system by reason of the existence of that system?

A. The purpose of the contract and the conference is to eliminate all of that, and it does, successfully.

Q. Do you know of—you spoke a moment ago of their being years back three methods of producing what is commonly described as stability. What were the two methods that you had in mind other than the present contract-rate system?

A. Well, there are, the other two systems that maintain stability are fighting ships, and a deferred rebate, both of which have been outlawed by the Act of 1916, Shipping Act.

Q. Do you know of any other method than the current contract rate system in one form or another that are calculated to produce what we call a reasonable stability of rates and service in shipping?

A. You mean in the United States, or outside of the United States?

Q. That is what I am talking about.

A. Not in the United States, no.

Q. In some other country is there some?

A. Oh, yes, the deferred rebate is used throughout the rest of the world.

Q. But it is not permitted in this country?

[fol. 1601] A. Not permitted, not legal here.

Q. And I suppose the competition that is engendered by the recognition of that deferred rebate system in other countries, wherever it may be practiced, is a factor that has to be taken into account by common carriers operating out of the United States or through the United States with respect to the cargoes that they carry?

A. Yes, it has to be very carefully considered.

Q. Has it been your observation that in these conferences there is, notwithstanding the existence of the contract rate system, fairly eager and constant competition as between the several member lines in the conferences to secure this, that, or the other lot of cargoes in shipping?

A. It doesn't change the competitive necessity at all. It only changes the competitive methods. We are just as active

and maintain just as large a staff to maintain business now as we would if we were independent operators.

Q. Well, to put it another way——

A. As a matter of fact, we have to be a little bett/er now than we were.

Q. You are trying all the time to get freight away from your fellow members if you can, but at the same rate?

A. That is correct, certainly.

Q. And there is the quality of your services versus the other members of the conference, does that have anything [fol. 1602] to do with your success in getting the cargo?

A. The quality of the service, of course, has a very profound effect, and aside from that, there are some personal contacts that count, and there are some shippers will go American flag, and others will not under any conditions, and you have that confronting you.

Q. In other words——

A. There is continual and active competition at all times.

Q. Every carrier must be on the alert, notwithstanding his membership in the conference, and notwithstanding the conference rate system, mustn't he?

A. And he would very quickly go out of business if he doesn't.

Mr. Hupper: Your witness.

Examiner Robinson: Cross-examination.

Cross-examination.

By Mr. McGovern:

Q. Mr. Lee, you have indicated that the contract system——

Mr. McGovern: May I say before I begin any cross-examination, Mr. Examiner, I do so in deference to your ruling permitting this testimony to go in. I regard testimony by a member of a conference other than the conference involved here as being irrelevant to any issues before us.

By Mr. McGovern:

Q. (Continuing) Mr. Lee, you have testified that the contract system induces stability among conference members. [fol. 1603] Now, what about the non-conference members?

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A. Well, there is a good deal of stability among them. When I was a non-conference member I simply took the conference rate and quoted 10 percent under it.

Q. Did that give you a stabilized condition in the trade?

A. Practically.

Q. Then what did you require the conference for?

A. I don't quite get your question.

Q. Well, if you can have non-conference operators that trade and still have a stabilized trade, why do you require the conference?

A. Because somebody else can cut 10 percent under my rates, and it goes on indefinitely without a conference.

Q. Well, you said in the trade you were familiar — that that didn't happen?

A. I said it did happen in the trade I was familiar with.

Q. That you quoted 10 percent under——

A. That's right.

Q. I understood you to say you have had stabilized, reasonably stabilized conditions in the trade?

A. You misunderstood me. I was running in many different services. When I was quoting a non-contract rate it was to India or to the Far East, or to Continental Europe against this particular conference.

Q. Well, I don't understand at all, I must admit.

[fol. 1604] A. We had no conference in Scandinavia, and there we were in open competition between us. Is that clear?

Q. Well, suppose there was to be a conference contract system used in this North Atlantic trade, would you not expect that the independents would cut their rates in order to attract business away from the conference contract system?

A. I would certainly expect them to.

Q. In your judgment, does that make for stability in a trade?

A. Absolutely.

Q. In other words, to have the independents forced to cut their rates in order to attract business, that is, in your judgment, the way you stabilize a trade?

A. Yes, because it is a very simple process. You stabilize the major interests in the trade, and the rest of the trade becomes fairly stable just by natural reaction.

Q. It does?

A. If there were more conference members, no, of course not.

Q. I am talking about a trade, however, where the use of the contract system, as the testimony indicates here, will have the effect of tieing up the entire patronage in the trade. Now, under such a circumstance, the independent is not compelled to cut his rate sharply in order to attract patronage away from the conference lines?

A. The answer is yes.

[fol. 1605] Q. And do you think that makes for a stabilized condition in the trade?

A. The answer is yes.

Q. Now, you know, do you, that since March 2, 1946, there has been no contract system in this North Atlantic trade?

A. Since when?

Q. Since March 2, 1946, approximately three years ago.

A. Well, I am not—that would only be a guess. I don't know.

Q. You don't know that?

A. No, I don't know the date.

Q. And you didn't know, probably, that another witness who preceded you here testified it was fairly satisfactory?

A. I haven't listened—I have only been here a few minutes.

Q. Well, it is a fact that the witnesses who preceded you have testified, including the Chairman of the Conference, that there was a reasona-ly stabilized condition in the North Atlantic trade over the past three years?

A. I think so.

Q. You think so, too?

A. Yes, sir.

Q. Though there had been no contract system?

A. Well, that is what you say. I don't know, I didn't hear it from him.

[fol. 1606] Q. Did you say you think there had been a stabilized condition here, or not? I am asking you to testify.

A. I think there has been, but there is rapidly approaching a condition when there won't be. That is the full answer to your question.

Q. You think there has been stability over the past three years?

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A. I think when we came out of the war there was not enough space for anything like the commodities we were shipping, and there was bound to be more or less stability.

Q. Even though we didn't have the contract system operating during that period?

A. The contract system is only necessary when you have got the normal conditions, absolutely normal conditions. You wouldn't use a contract in war-time. I consider the period immediately after the war as reflecting conditions of the war.

Q. Well, what do you regard as the normal conditions that would bring about necessity for the contract system?

A. Well, conditions like today.

Q. Well, today, describe them, please. You are testifying. I can't testify.

A. You asked me what kind of conditions. I say today's conditions.

Q. What are those conditions? What peculiar conditions exist today?

[fol. 1607] A. We are back in more or less normal channels I say, more or less normal, pretty nearly normal I would say.

Q. What peculiar conditions in the trade, in your judgment—normal conditions, I understand you to say, but what are those conditions that justify the use of the contract system, in your judgment?

A. What are the normal conditions that justify the use of this contract system?

Q. Yes.

A. Well, as I said at the very beginning, a protection of the trade.

Q. Well, now, the trade is entitled to protection, is it not, at any time, normal or abnormal?

A. Yes.

Q. Well, then, what do you mean by the normal conditions that you say now require the use of the contract system in this North Atlantic trade?

A. Well, the same conditions that require a conference, the same conditions that require a contract system.

Q. Well, we are shaking our tails around a circle.

A. Absolutely. That is what I say. I can't see any other answer to your question.

Q. Very well. Let's come to another point, and perhaps we can see the answer. You have suggested that one of the virtues that adheres in the conference system is that it [fol. 1608] enables all shippers to get equal treatment from the carriers, is that right?

A. That's right. That is primary, I believe.

Q. And you think that situation comes about as a result of the conference system?

A. That is the only way it comes about.

Q. That is the only way it comes about?

A. That is my judgment.

[fol. 1609] Q. That is your judgment? Weren't you aware of the fact that every common carrier is required by law to give all comers equal treatment at all times?

A. Certainly.

Q. Well, then, what does the Conference system have to do with it?

A. Very simple. Equal treatment means you can come in and get a rate, and five minutes later you can come in and give somebody else a different rate. That is still equal treatment, as probably your client can tell you.

Q. Well, I am asking you to tell me.

A. Well, I am now telling you.

Q. (continuing) And not my client.

A. That is under the law, that is perfectly proper treatment.

Q. That is equal treatment?

A. That is equal treatment.

Q. Now, in your judgment, does the contract system prevent that sort of an arrangement?

A. It does.

Q. Have you seen the contract in this case?

A. Well, I don't know what case you are talking about.

Q. Well, I am talking about the case you are testifying in.

A. I have seen all contracts, yes.

Q. You have seen our contract here, have you?

[fol. 1610] A. Certainly.

Q. All right. Now, let's look at that contract (handing the document to witness).

A. I have seen this.

Q. You have seen this?

A. Yes. It is the usual form.

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Q. The usual form?

Now, would you point out where in that contract you think that the Conference has given the shipper any assurance that he is going to have either regular lines engaged in the trade or regular sailings by any lines in the trade?

A. Well, it — a natural corollary of the contract.

Q. Well, let's leave some of these vague natural corollaries out, and I am asking you to direct your attention to the document.

A. You mean what it says in so many words?

Q. Yes. Does it say in so many words any place in that contract that in exchange for the shipper giving the contract all of the patronage, the Conference will carry as much as a single ton of his commodity?

A. I can't remember. I would have to read it.

Q. Well, please do.

Mr. Hupper: I object to this catechism which he goes through with every witness he comes across.

[fol. 1611] Mr. McGovern: Well, if you would stop producing witnesses from Timbuctoo and every place else around here——

The Witness: I didn't come from Timbuctoo.

Mr. Hupper: The contract states on its face what it provides.

Mr. O'Connor: He doesn't have his name on the paper.

Examiner Robinson: Never mind here; let him answer it if he can.

By Mr. McGovern:

Q. Mr. Lee, what I am asking is if, on the face of that contract, there is an obligation, as the shippers who have appeared here have testified, that they confine all of their shipments to the Conference Lines?

A. Yes, they are covered by the contract.

Q. Yes, and that is all commodities, this is an all-shipment contract you are looking at?

A. Yes.

Q. Now, I am asking you whether on the face of that contract you see any reciprocal obligation on the part of the carriers to carry any cargo?

A. I don't see it here.

Q. You don't see it there?

A. No.

Q. And down below you notice——

[fol. 1612] Mr. Hupper: Look at Paragraph 4, Commodore.

The Witness: I know that it is here, but I just haven't seen it. And I am not sure it is actually in this contract, but I know it exists, that we are required to supply service. I don't see any sense in having a Conference if you don't supply the service.

By Mr. McGovern:

Q. I agree with you, sir, agree 100 per cent. If you can find any requirement in there to that effect——

A. It says, "The carriers severally agree to furnish the merchant at the rate or rates named or provided for herein space in such vessels as they may respectively load at said loading ports."

Q. Yes?

A. And then the lines are named. Everybody knows what ships they run and where they run to. That is part of the question.

Q. That is equivalent to my saying I may give you a million dollars if I feel like it, isn't it?

A. Oh, I don't think so.

Q. It says——

A. There is more chance of getting a ship here than that.

Q. It says, does it not, that they will carry on such ships as they may load?

A. That's right.

[fol. 1613] Q. Do you see any obligation on their part to load any ships?

A. No. No.

Q. You will note, as the earlier witness who preceded you did, that the only real obligation——

A. We have signed a lot of those contracts and didn't know we weren't obligated to carry their freight.

Q. Well, it may be you don't know a lot of things about this contract.

Examiner Robinson: For the record, you had better let him alone. You have got your answer.

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Mr. Hupper: You did carry the freight in every instance, isn't that a fact?

The Witness: Certainly.

By Mr. McGovern:

Q. You will note on the face of that paragraph your were reading, Mr. Lee, that the only firm obligation on the part of the carriers is to allow the shipper to ship by an independent in the event they don't supply service.

A. Yes, I think — is an "out" for the contractor, provided——

Q. It is not an "out," it is the only privilege he gets under the contract; he gets the privilege to ship by an independent?

A. Oh, no; stabilized conditions in the trade, he gets stabilized conditions.

[fol. 1614] Q. He does?

A. And he can commit himself forward.

Q. He can?

A. Surely.

Q. For how long?

A. Any length of time he wants to.

Q. For a year, let us say?

A. If he asks for that.

Q. If he does. What does that contract provide for with regard to rates?

A. It is probably good for 90 days. I don't know.

Q. That's right. There is nothing in the contract, is there, to prevent the Conference from increasing the rates?

A. Nothing at all after the 90 day period.

Q. Yes, 80 days, actually 60, 20 days notice and 60 days. Now, the shipper who was produced to testify here yesterday by Mr. Hupper testified that 80 or 90 days was very little use for him, really, for forward trading, that he wanted an assurance of a stabilized rate for a year. Does he get any such assurance on the face of that contract?

A. Well, this isn't the only contract he can execute; he can get one for a year if he wants it.

Q. I am talking about this contract.

A. This contract, I would say, "made this blank day, 1949," that is all I can see there is.

[fol. 1615] Q. I am talking, though, about the guarantee he has that the rates will not be increased during the life of the contract.

A. That's right.

Q. The guarantee is good for 80 days, is it?

A. Well, on this contract, I would say it is not. Is there a 90-day clause in this? I don't see it. No date on this contract; it simply says, "1949," so I don't know what——

Q. Well, the entire contract is for the period from November 1st.

A. That's right, November 1st to December 31, 1949.

Q. Well, now, notice the clause down there which I have outlined in the margin dealing with rates.

A. Outlined on the margin? "Subject to being increased reasonably from time to time. Any notice of increase shall be deemed accepted by the merchant unless within 20 days after his receipt of the notice"—yes, that is correct.

Q. So that the merchant that signs that contract may well have his rates increased within 20 days, may he not?

A. Well, I think he legally could, yes.

Q. And then he has 60 days to decide whether he wants to revert to them or not—I am asking you, on the face of that contract, how does that enable a shipper to protect forward sales over any length of time?

[fol. 1616] A. Well, it is a custom of the trade. He knows perfectly well that if he has got this contract and makes forward shipments, if he wants to get a longer period, he can get it any time he wants.

Q. Well, he knows that in so far as the independents are concerned, too, doesn't he?

A. I don't know. It has been a long time since I have been an independent operator.

Q. Apparently it has. But the testimony here shows that the experience of the independent companies giving regular sailings in this trade, not your trade but in the trade that is involved here, since 1931, is a longer period of time by time than the actual members who have signed that contract, did you know that?

A. Well, I don't know much about Isbrandtsen. I remember it as Isbrandtsen-Moller Line. I haven't followed it, but——

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Q. That's right, but the Waterman Steamship Company has just come into the trade post-war.

A. Well, I think they are new in the Antwerp trade, yes.

Q. So the shipper who has been dealing between the North Atlantic ports and Antwerp for the past 20 years has no particular reason to feel that Waterman is going to stay in the trade, has he?

A. Well, he has the same feeling for Waterman he has toward anyone else in the line, I should say, or in the rate.

[fol. 1617] Q. Well, I would think he might have somewhat more assurance with regard to an independent who had been in it giving a minimum service over a period of 15 years, wouldn't you think so?

A. Not necessarily. That is his judgment.

Q. That is his judgment. That is the judgment we are talking about, is it not, the shipper's judgment.

Now, you emphasize the fact that one of the virtues that inheres in the Conference system is that large shippers get no advantage under the contract operation over the little shipper, is that right?

A. That is true.

Q. You are aware, are you not, that the Shipping Act itself prohibits giving any such advantage in terms of volume of freight offered?

A. Well, I question that very much.

Q. You do?

Mr. Hupper: You had better quote the Act itself.

Mr. McGovern: I will do it.

The Witness: I question it very much.

Mr. Hupper: You put it a little too strongly.

Mr. Galland: I object to quoting this statute, and having an argument on it.

[fol. 1618] Mr. McGovern: Well, this witness was allowed to testify that deferred rebates and fighting ships have been abolished by this Act, so I guess he is qualified to testify about it to his knowledge.

Mr. Galland: How about it, Mr. Examiner? I object.

Examiner Robinson: What was the question? Let's go back to it again.

The Witness: Yes, what was it?

Mr. McGovern: I will reframe the question, if I may, when I find this section.

The Witness: I think it is Section 16.

Mr. McGovern: I am talking, actually, about the old Section 14, which is now Section 812 of the Code, but the same section that prohibits deferred rebates and fighting ships.

The Witness: That's right. That is the section.

Mr. McGovern: It also prohibits any unfair or unjust or discriminatory contracts based on the volume of freight offered. You are aware of that section?

The Witness: Oh, yes.

Mr. McGovern: Now, in the face of that section, do you still think that a conference should be entitled to give a large shipper like General Motors an advantage rate on the basis of the volume offered over a smaller shipper?

The Witness: I think they do.

[fol. 1619] Mr. Galland: Unreasonably or unfairly.

The witness: I think they do.

Examiner Robinson: Well, of course, Section 16, even 17, might prevent that. I am not saying it does, but we all recognize that there are other provisions of the Act.

By Mr. McGovern:

Q. Let me ask you this. Suppose in one of the trades you are engaged in, since you are not engaged in this trade, you had a conference system, a contract system in addition, and General Motors came around and asked you whether or not for 60 days, they could continue to ship on the contract rate without your requiring them to sign a contract, would that be giving General Motors an advantage over the smaller shipper in your judgment?

A. No.

Q. It wouldn't?

A. No.

Q. Even though during the same period you required all small shippers to sign a contract in order to obtain the contract rate?

A. No, I wouldn't do that. If the smaller shipper wanted to sign a contract, he could.

Q. Yes.

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A. And would.

Q. Let's suppose you made it compulsory that on and [fol. 1620] after a certain date, in order to obtain the contract rate, shippers in the trade would be required to sign a contract?

A. Suppose you——

Examiner Robinson: Can't we assume that? I mean, isn't that the basis of the contract rate?

Mr. McGovern: Yes. Now I am asking whether you would allow a large shipper to come along and obtain the contract rate without requiring him to sign a contract?

The Witness: Decidedly not.

By Mr. McGovern:

Q. Well, are you aware of the fact that that has been done in this trade?

A. I am not, no.

Q. You aren't aware of that?

A. I am certainly not aware of it. I don't think the case has been properly stated to me, because I don't think it should happen.

Q. You don't think it could happen?

A. No.

Q. You agree it would be discriminatory if it did happen?

A. As you have actually expressed it, it would be discriminatory and we wouldn't do it.

Q. You wouldn't do it?

A. No, sir.

Q. Well, you have indicated that in the Shipping Act of [fol. 1621] 1916 the Congress prohibited two of the devices formerly used by conferences so as to stabilize the trade, namely, the fighting ship and the deferred rebate?

A. That's right.

Q. Now, if the Congress were so solicitous about maintaining the conference system, as you suggest, why do you suppose they abolish those two devices for maintaining stability?

A. Because through two years investigation it disclosed to them that such a system would produce a monopoly, and this country is opposed to monopolies.

Q. This country is opposed to monopolies?

A. And therefore, they devised, or they permitted the only system which will permit a ship operation in violation of the Sherman Law that will not create a monopoly, but will destroy or prevent a monopoly.

Q. Well, now, let's find out what you mean by monopoly.

A. I mean, monopoly is a complete control of the ocean in a particular area.

Q. In a particular trade?

A. That's right.

Q. Let's assume this conference in this North Atlantic trade were to invoke, as they are threatening to do, the contract system straight across the board on all commodities moving in the trade, would you not expect the necessary effect of that type of contract system was to monopolize [fol. 1622] the trade in the hands of the conference members?

A. No, it can't create a monopoly.

Q. It can't?

A. No.

Q. Why not?

A. Because there are about 20 to 30 people signing this. [fol. 1623] Q. Well, is it your view that if all of the competitors in a given trade get together that you don't have a monopoly?

A. There is no way, the ocean is a free right of way, you can't keep other people out of the ocean.

Q. No, but can you keep an independent American flag operator from approaching and having access to American shippers?

A. No, certainly not.

Q. You can't? Well, I am glad to hear that.

A. We wouldn't want to make an attempt to do that.

Q. I am glad to hear it.

Now, suppose you sign General Motors to an exclusive Conference contract; is an independent American flag operator still free to approach General Motors and obtain part of the patronage of that company?

A. Certainly not.

Q. What?

A. Certainly not. Why should they? General Motors has a contract with these people.

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Q. All right, now——

A. General Motors isn't the only motor company in the industry.

Q. That's right. So you sign a contract with an association of automobile manufacturers, including them all.

A. That's right.

[fol. 1624] Q. Now, is your independent American flag operator entitled to access to any of the automobile manufacturers?

A. Yes, any that aren't in this association, that haven't signed the contract.

Q. I understand, but assuming you have induced them all to sign the contract?

A. Oh, well, if you reduce it to absurdities, of course, it is a monopoly, and it must be an absurdity because there is no way to control all shippers that have ever been heard of.

Q. Suppose you were a shipper.

A. Right.

Q. Instead of a so-called executive of a shipping line, and——

A. Thanks for the compliment.

Q. I meant that in the sense in which you have qualified yourself. There is nothing invidious in that.

A. It sounds so to me.

Q. It wasn't meant so.

Suppose you are presented with the alternative, let us say, in this North Atlantic Trade of shipping your goods exclusively by the Conference Lines at a lower rate and shipping occasionally by the Conference Lines at a higher rate and occasionally by an independent: Now, in your judgment wouldn't sheer business economics alone induce [fol. 1625] you to sign a contract?

A. It depends on my business, entirely upon my business.

Q. In this trade, Mr. Lee, let us say an independent like Isbrandtsen is giving a minimum of 24 sailings a year—in other words, bi-monthly——

A. Right.

Q. In contrast to that shipper, if he relies upon the Conference, has a number of sailings that now approximate 520 per year.

A. Yes.

Q. In other words, something in excess of one a day.

A. Yes, that is too many.

Q. It may well be, but what would you expect the average shipper to do when he is presented with a situation of the Conference contract?

A. I would expect him to add up the result and determine which offered him the best proposition, the Conference or the independent.

Q. Well, normally, since he will probably require more service than any single independent can give?

A. He would normally take the Conference.

Q. He would normally take the Conference, wouldn't he?

A. That's right.

Q. And the testimony here is, as you may or may not know, that 3,000 shippers in this trade did return these con- [fol. 1626] tracts prior to the issuance of an injunction. Now, under those circumstances, doesn't the contract system result in presenting an independent operator with one of two alternatives, either going out of the trade or joining the Conference?

A. No, oh, no, I wouldn't say so at all. He still has a very potent weapon in the trade; he can under-quote the Conference with complete security, and that draws a lot of business.

Q. He can under-quote, but he can't get access, can he, to the vast majority of the business?

A. There is no—even 3,000 shippers will not close the trade; 30,000 will not close the trade. There is no way to close the trade.

Q. Well, now——

A. That I have ever heard of. If I knew it, I would take it.

Q. Now, let me ask you this: How many shippers in a trade would — think you would have to have before you could close the trade?

A. You would have to have them all.

Q. Is it not the contemplation of this contract that all shippers who can possibly be induced to sign it will, in fact, be induced to sign it?

A. That is the purpose.

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[fol. 1627] Q. And your judgment is that they can't possibly succeed, is that it?

A. Absolutely impossible to succeed.

Q. But that is certainly the purpose of the contract, is it not, to tie up the patronage in the trade to the greatest possible extent?

A. That's right.

Q. And you say even if you can achieve that control of the trade, that the members of the Conference still do not, in your judgment, have a monopoly?

A. That's right.

Q. Now, you are aware, are you not, that in addition to prohibiting fighting ships and deferred rebates, the Shipping Act of 1915 also prohibits retaliations or discriminations against a shipper for patronizing another carrier?

A. That's right.

[fol. 1628] Q. Now, let us suppose a shipper comes to you and says that he understands that you have a rate of a dollar a ton for cotton linters, or $10 a ton on cotton linters, and he wants to ship three tons. You tell him that that rate is only available to a man who has signed a contract, that the non-contract rate is a dollar thirty-five. In your judgment, do you discriminate against that shipper because he has patronized another carrier if you refuse to give him the lower contract rate unless he agrees not to patronize another carrier?

A. Gosh, I can't answer that one. You have got me mixed up. If a shipper——

Q. Let me restate the case this way and perhaps it will be clearer to you. You have a contract with a shipper?

A. Yes, I have a contract.

Q. You have a contract as a carrier whereby he agrees to confine all of his shipments to your line?

A. Yes, then he ships with someone else.

Q. Then he ships via an independent carrier?

A. Yes, absolutely.

Q. Then he comes back to your line and ships again, but when he comes back to make the next shipment you charge him a higher rate?

A. That is right, non-contract rate.

Q. And you charge him that rate, do you not, solely be-

[fol. 1629] cause he has in the meantime patronized another carrier?

A. No, because he has broken his contract.

Q. No, there was nothing in his contract——

A. He has cancelled his contract.

Q. Perhaps he has cancelled his contract, but there is nothing in his contract forcing him to pay a higher rate because he shipped with some other line?

A. Well, if he has got a contract, no matter what he does, he will ship at the contract rate.

Q. And you say if he comes back to your line——

A. Having shipped on a non-conference carrier, and you charge him a higher rate solely because he has patronized a non-conference carrier, that you are not, in the terms of this statute, discriminating against him because he has patronized another carrier?

Mr. Hupper: Why don't you stick to this contract form?

The Witness: If I did it by that question, but I do it by the contract. Either I have a contract with him or I haven't.

By Mr. McGovern:

Q. I have posed the question, you have the contract with him?

A. That's right, and he violates the contract. Then he hasn't a contract.

[fol. 1630] Q. That's right.

A. That is the answer.

Q. Then he comes back and tries to ship the same commodity that he previously shipped by you.

A. He has got to start all over again and get a new contract.

Q. He has got to start all over again, you think the mere fact that you now propose to charge him a higher rate, mind you, for the same commodity, the same service, you are now going to charge him a 20, 30 percent higher rate, because in the meantime he had patronized another carrier, you say that is not discrimination?

A. No, not legally.

Q. Not legally, despite the fact that the Act says you shall not discriminate against a shipper?

A. It is no violation of that Act.

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Examiner Robinson: Let's get something straight. As I understand it, now I may be wrong, the fact that he broke it once and then comes back again, you can come back and get something for what he should have paid in the first place, but then you can start all over again with a new contract, isn't that right.

Mr. McGovern: I am not talking about that, I haven't raised any question, Mr. Examiner, about the liquidated damages or penalty features, I am talking about the conditions that confront the shipper from that point out.

[fol. 1631] Examiner Robinson: Well, you could still start over again, couldn't you, sir? I mean, I am just asking——

Mr. McGovern: Yes.

The Witness: Yes. The answer is decidedly yes. If he ships with an outside line he has broken his contract, he has cancelled it, and then he has to start all over again.

By Mr. McGovern:

Q. And if he refuses to sign a contract again when he comes back again, you charge him a higher rate?

A. That's right, because he has no contract.

Q. You say you have not retaliated against him because he has no contract?

A. Not at all. The fact that he shipped with someone else has nothing to do with that shipment. It violates his contract.

Q. Now, let us assume when he first came to you to sign the contract you offered him the lower contract rate in exchange, I take it, for his agreeing to assign all of his statements by your line?

A. Yes.

Q. That is the only consideration he gets on the contract, is it not, for the lower contract rate, namely, his agreement to give you all of his patronage?

A. Oh, no, not me, but 20, 30 other shipping companies.

Q. I am using you in the personified sense.

A. I mean, he gets the benefit of a conference contract.

[for. 1632] Q. That's right.

A. Which we maintain is a very beneficial document.

Q. That's right. And at the same time he comes down there to sign that contract and tenders you tonnage under his contract, another chap who has not signed the contract comes down and tenders you the same commodity and in the same amount. In one case you charge the non-contract person 20 to 30 percent higher?

A. That is right.

Q. Do you think that is a reasonable rate to charge him in view of the lower contract rates you are charging——

A. Well, no, I wasn't paying attention—we don't charge him 20, 30 percent higher—probably 10 percent higher.

Q. Well, the testimony in the face of the record is it is 20 percent higher.

A. Well, it could be 20, but ——

Examiner Robinson: Well, that depends upon the tariff provision.

Mr. McGovern: I agree. We are talking about this trade. We cannot discuss the Scandinavian trade.

The Witness: Well, normally in a trade the difference between the contract and non-contract rate is rarely 20 percent.

By Mr. McGovern:

Q. But the fact remains, does it not, between those two [fol. 1633] shippers the man who gets the lower rate——

A. Has a contract.

Q. And he agrees to ship all of his goods by your line?

A. That's right.

Q. And that even though his total shipments by your line may be much less than the shipments offered you by another non-contract shipper?

A. We don't, we consider each shipment that is offered on its merits. We don't compare it with what everybody else has offered.

Q. I understand, but I am saying that the man who is entitled to the conference rate because he has signed the contract may be shipping only one-tenth as much?

A. That's right, he may be shipping a thousandth as much.

[fol. 1634] Q. And the other party comes down and tenders you 2,000 tons, and you say you charge him the higher

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contract rate simply because he will not agree to confine all of his shipments to your line.

A. That's right, because we will not give a lower rate because of volume. We will not, that is a violation of the Conference. That is the purpose of the contract.

Q. Yes, I understood earlier for you to say, though, that such rate differentials might well be fair and non-discriminatory if they weren't unjust.

A. Well, I don't know what you are talking about now.

Q. Specifically, then, your judgment is that the fact that you charge your common carrier—mind you now, you are required by law to serve all comers at equal terms——

A. That's right.

Q. The fact that you charge one man a lower rate because he has a Conference contract with you does not, in your judgment, represent a discrimination against the person who is charged the higher rate for the sole reason that he has not signed such a contract?

A. That is correct.

Mr. McGovern: That is all.

By Mr. Cockrum:

Q. Mr. Lee, you testified that in your opinion 500 conference sailings in this particular trade a year were too many. [fol. 1635] A. I would think so.

Q. How many Conference sailings annually would you consider a proper number?

A. Well, that is curbstone opinion; I would want to sit down and study that. I would take the Maritime Commission's requirements. It seems to me more than a ship a day is too many for this trade, but I don't know; I would have to examine it.

Q. Is that right?

A. And I could tell you in a half a day without any difficulty, if it is of great consequence.

Q. Would you say that that number of Conference sailings annually is conducive to an instability within the Conference within this particular trade?

A. No. Instability in the Conferences is impossible. You have to have stability in a Conference. That is what the

Conference is for, to produce stability. That is the purpose of it.

Q. They cannot be unstable, then?

A. No.

Q. Conferences, simply cannot be unstable?

A. No.

Examiner Robinson: You mean they can't afford to be.

Mr. Cockrum: No, that isn't what I mean, Mr. Examiner. [fol. 1636] The Witness: I say that a Conference, the purpose of a Conference is to stabilize, and that there is no instability in a Conference as long as a Conference observes the rules and is a Conference. That is my answer.

By Mr. Cockrum:

Q. You are at this time unprepared to state how many sailings, Conference sailings, annually, in your opinion, would be justifiable in this particular trade?

A. Yes, because the number that are required today might be very different — the number that would be required tomorrow or yesterday. It depends on what the requirements of the trade are. You have to sit down and analyze it.

Q. Supposing a shipper should come to you and present his shipping problem to you; supposing he had a single shipment from one of our North Atlantic ports to one of the ports in Belgium, Holland, or Germany, and you told him that you had two rates, the Conference rate and an non-tract rate, if he signed the contract for that particular shipment you would give him one rate, if he refused to sign your contract you would require him to pay the non-contract rate which is 20 per cent higher. Now, in both instances, the service performed is exactly the same. Which, in your opinion, is the reasonable rate?

A. Well, they are both reasonable for the purposes they [fol. 1637] are put into effect for. One is a value received for a contract; the other is a value received for a shipment made. The service is not identical by any means.

Q. The proposed shipper has one shipment.

A. Well, I wouldn't bother with him.

Q. Supposing he has——

A. One shipment of how much?

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Q. Supposing he has the same tonnage but he has it in two separate shipments, the same tonnage.

A. Right.

Q. He has it in two separate shipments.

A. Right.

Q. And you tell him that if he will sign on the dotted line you will give him one rate; if he refuses to sign on the dotted line you will give him the other.

A. That is correct.

Q. The other rate. Are both rates, in your opinion, still reasonable?

A. Yes, entirely, for the purpose for which they are devised.

Q. Both reasonable on the basis of the service performed?

A. That's right.

Q. The service in both cases being the very same service?

A. Well, that is where we disagree, Mr. Counsel. I don't believe it is the same service by any means.

Examiner Robinson: Well, put it this way, would this be [fol. 1638] a fair assumption, that by contracting with the shipper you agree that you will give him a lower rate, you don't say that you think that that is all the remuneration you had but in consideration of him giving that you are willing to take a lesser amount from him; is that right?

The Witness: Yes, that is correct. Of course, what you are trying to do is to reduce this to an absurdity. That isn't the way it works. A shipper doesn't come to you with one shipment. There is no such animal that I know of.

Mr. Cockrum: All right.

The Witness: All right, now, I will try to answer your question. I don't mean to say that you are—I say the only answer I can give you that it doesn't fit with anything I know.

Mr. Cockrum: I believe that is all, Mr. Examiner.

By Mr. McDowell:

Q. What do you mean—I am a little confused—by the situation there, Mr. Lee, I take it what you mean to say is that you don't have the shipper come in and bargain with you on one shipment; is that why you think it is absurd?

A. No, no, no; I think that the question you are trying to get me to answer, a question doesn't apply there, because there might be individual isolated cases where it wouldn't [fol. 1639] be a fair proposition. I don't know of any, I never heard of one. Well, what we have is a contract that we consider puts a heavy burden on us. You evidently take the other view, but I don't; I take the view that this is a very heavy burden on all of these lines, to maintain a service, to maintain a rate.

Q. I haven't expressed any view.

A. I don't mean you individually; the questions are leading to that. I say that I believe this contract puts a heavy burden upon me as a ship-owner, and I think that I have given something in return in a reduced rate, and I also think the shipper has given me something in return when he signs my contract and says, "I will ship all my stuff on the Conference Lines." That is a proper Conference, nothing else. He is not obliged to sign this contract; I am not obliged to sign it; it is a voluntary agreement between two business men, and in my opinion, perfectly legal and perfectly proper, and both sides having a fair return for their investment.

Q. Well, are you aware, Mr. Lee, that in this Conference with which we are dealing here, the shipper is not offered a reduced rate, rather, the shipper was told that if he didn't agree to ship exclusively by the Conference Lines, that on and after last November 1st his rates would be increased 20 per cent, or 20 per cent and up?

[fol. 1640] A. Well, yes, it works both ways, certainly, either increases the rate or decreases the rate or maintains the rate.

Q. So you don't necessarily——

A. The contract may be for the rate that is now going, that may have been the decided contract rate.

Q. What I am coming at is that the shipper is not offered a rate reduction from the rate which was previously in effect, but he is offered a rate lower than the rate which he would otherwise have to pay and that rate which he would otherwise have to pay may be the same or it may be a higher rate than the one that was previously in effect without a contract.

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A. That is exactly the situation, yes, but he is also advised that the rate is going up, the non-Conference rate is going up. So he decides to sign a contract to protect the rate that he then has. We have a right to raise our rates whenever we feel that business requires it, or lower them.

Q. You said a moment ago that you felt that you had taken on a heavy obligation.

A. Yes.

Q. As a ship-owner.

A. Yes.

Q. In offering this contract to the shipper.

[fol. 1641] A. Yes.

Q. And I would like to ask you precisely what that obligation is, in your opinion.

A. The obligation is to maintain a reasonably regular and effective service over the range of ports that have been declared to make available to all shippers in that area who wish to sign a contract, to make available to them the necessary tonnage to move their goods. That is the obligation that I feel every Conference member has, because shipping is purely a service that we render. That is all we have for sale.

Q. That obligation is not expressed in the contract?

Mr. Hupper: Oh, yes, it was in the contract.

Mr. McDowell: Let the witness point it out, then.

The Witness: I think that is only——

Mr. Hupper: I tell you as counsel, it is.

Mr. McDowell: I make the statement in the form of a question.

The Witness: I make the statement without reading the contract and knowing every move that every shipping company makes with regard to the things, that we feel and we know that we have an obligation, and I am not sure but what we have a very legal obligation by our filing with the Maritime Commission—I think definitely it calls upon us to provide a reasonable service.

[fol. 1642] By Mr. McDowell:

Q. Now, let me put it this way, and see if we can come at it:

You feel that under this contract you undertake any greater obligation with respect to regularity of service than you have any way as common carriers?

A. Yes, decidedly.

Q. And do you express any such greater obligation on this contract?

A. Well——

Q. I mean, do you give the shipper anything he can get hold of there in the way of consideration for that commitment *to* makes?

A. Well, I don't know in so many words whether we do or not. I am not sure. I certainly know that the obligation exists, and so does every other person in the shipping business, and shipping as a ship owner.

Q. You, as a ship owner, feel conscious of such an obligation?

A. Yes, sir.

Q. But you don't know whether or not you are committed under this contract?

A. I wouldn't be surprised if we are, or not. I don't know.

Q. Let me ask you this: As to the distinction between the [fol. 1643] contract and the non-contract rate which is made available to the shipper under the contract rate system, is there any reason for the difference made with respect to the application of the contract rate as against the non-contract rate to a particular shipper other than the willingness of the shipper to sign the contract?

A. Well, the reason is this: that the rate is arrived at in all important cases by negotiation, and you decide what rates you require in the trade, and then if you can get certain security in the trade by means of a contract, you decide how much you can afford to pay for that security, which is the discount, or under the rate. It is all negotiation. I don't think there is any fixed formula. I am sure there is not. If it comes out a fixed formula, it is largely an accident, because we don't have fixed formula.

[fol. 1644] Q. Well, what I am coming at, I am afraid I have stated the question so awkardly that you didn't follow me. Is that the only reason for the distinction as to whether the shipper gets the benefit of the lower, relatively lower

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contract rate or of the relatively higher non-contract rate, is the shipper's willingness or lack of willingness to sign the conference contract?

A. We try to induce him to sign a contract by offering him a lower rate.

Q. Now, you try to induce as many shippers as you can to sign a contract?

A. Yes, definitely.

Q. And your testimony, I understand now, was to the effect that you felt it would be impossible to require all shippers to sign such a contract?

A. My practical experience is that it is impossible. Over the many years I have been in it, it has been impossible.

Q. Have you had experience in trades in which the conference contract is applied all the way across the board on all commodities?

A. Yes.

Q. What trades are those?

A. Well, we have had it in, well, no, wait a minute, I asked you a little—there are a few commodities that are always out in any conference. I mean, you just, for some [fols. 1645-1647] reason or other, you leave grain out, or oil out, or some commodity that doesn't naturally move in a general cargo business. Conferences are primarily for general cargo, not for tramping service at all. Those commodities are left out. All other commodities are covered by a rate, a contract rate.

Mr. McDowell: Mr. Examiner, I think we have got a very pertinent line of inquiry here that is going to take a little time on this distinction, and I know you said something about adjourning at this time.

(Discussion off the record.)

Examiner Robinson: Suppose we suspend now, and have the witness come back tomorrow.

(Whereupon at 5:35 p.m., the hearing adjourned, to reconvene tomorrow morning, May 26, 1949, at 10:00 a.m.)

[fol. 1648] TRANSCRIPT OF HEARING

Met, pursuant to adjournment, at 10:00 a. m., May 26, 1949.

[fol. 1649] PROCEEDINGS

Examiner Robinson: I guess we can start, gentlemen.

JAMES SINCLAIR resumed the stand, having been previously sworn, and testified as follows:

Cross-examination.

By Mr. McGovern:

Q. Mr. Sinclair, at page 706 of the transcript, you testified you were Chairman of the Trans-Atlantic Associated Freight Conferences, is that right?

A. That I was Chairman, yes.

Q. There has been mention from time to time of the Trans-Atlantic Associated Freight Conferences on the record, but we have, up to this point, had no description of what the Associated Freight Conferences were.

Will you describe that organization for us, please?

A. There is an agreement filed covering the Associated Freight Conferences, but its purpose was to give a name to an office. The office used the services of stenographers, telephone operators, and all others necessary to the functions of a Freight Conference, and by serving more than one Freight Conference, minimize the expense to each.

Q. Is it, theoretically, an association of conferences?

A. Not for the purpose of discussing competitive rates. [fol. 1650] In other words, the members of, say your Continental Freight Conference, merely because they are members of the Trans-Atlantic Associated Freight Conferences would have nothing to say about the rates to the United Kingdom. That would be completely in the hands of the United Kingdom Freight Conference.

Q. And the purpose of the Associated Conferences, then, in your view, is to largely coordinate administrative matters for the various Conferences and members of it?

A. Yes, sir.

Q. Well, now, for the sake of the record, I have this copy of the United States Maritime Commission's summary

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of Freight Conferences and Agreements, with which you are undoubtedly familiar.

That reflects in the first paragraph the following as the purpose of the function of the Associated Freight Conferences:

> "Coordinate activities of the parties in respect to non-competitive matters, and provide administrative organization through which is handled clerical work of the Conference dealing with transportations of freight between United States North Atlantic ports and European ports. The following are the affiliated Conferences:"

And then it names North Atlantic Continental Freight [fol. 1651] Conference, that would be agreement No. 4490; Morocco-Algeria-Tunisia North Atlantic Westbound Conference, that is 4570; North Atlantic United Kingdom Freight Conference, 7100; North Atlantic Red Sea and Gulf of Aden Freight Conference, 7530; North Atlantic Baltic Freight Conference, 7670; North Atlantic French Atlantic Conference, 7770; and the North Atlantic Mediterranean Freight Conference, 7980.

Is it your recollection that that exhausts the membership of the Conferences?

A. No, I don't know whether it does. The record should be complete, if that is the latest record, but——

Examiner Robinson: That is as of February?

Mr. McGovern: March 21, 1949.

A. (Continuing:) I would say generally—of course, you know I have been out of there for quite a while—but generally, any Conference which is handled administratively by the Conference Office would be referred to as a part of the Trans-Atlantic Associated Freight Conferences.

When you speak of non-competitive matters, I might say by way of illustration, a number of years ago we undertook to get greater stability in the trade by the adoption of a uniform bill of lading. It was an effort that, the record showed, commenced way back in, I think it was 1861 or '2, and each time, after prolonged negotiations, it had failed. This time we had a reasonable degree of success, and I

[fol. 1652] believe it formed the pattern for what was finally adopted as the present Maritime Commission form of bill of lading—that is, in its basic elements.

Q. Now, the summary in this Commission pamphlet shows, I think, that there are seven Conferences associated in the Trans-Atlantic Associated Freight Conferences. Is that your recollection?

A. I wouldn't know. I am not familiar. I think you ought to ask Mr. Andrews those up-to-date questions. I gave you the basis of the Associated Trans-Atlantic Freight Conferences as I understood it.

Q. This report also shows approximately 90 individual lines that are members of the Associated Freight Conferences, of which approximately eight are American Lines. Does that conform to your impression of the Conference today?

A. I have no impression of the Trans-Atlantic Associated Freight Conferences membership today, but that might be so.

Q. Well, your own line is a member, is it not?

A. No.

Q. You are not in this North Atlantic trade at all?

A. No, sir.

Mr. Hupper: Just to clarify that, Mr. Sinclair has not been connected with any of the Conferences in trades now mentioned since about March 1943.

[fol. 1653] The Witness: April.

By Mr. McGovern:

Q. Mr. Sinclair, there is an additional Conference listed here called the Trans-Atlantic Freight Conference. Can you tell us what that Conference is?

A. I can't recall at the moment. Can you give me a lead?

Q. Well, the brief introduction by the Commission describes it as "Deals with local matters at New York in connection with the transportation of freight from New York to European ports."

Would you like to look at it (handing document to witness)?

A. I think that, as I recall it—as I recall it, it was an effort to formulate uniform practices locally at the various

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ports. They had committees representing New York; they had committees representing Hampton Roads; they had committees representing Boston. It had nothing to do with competitive matters. It was strictly a question of practices in respect of deliveries.

Q. Well, now, while you were Chairman of the North Atlantic Continental Freight Conference, and Chairman of the Trans-Atlantic Freight Conferences, were you also Chairman of this other Conference?

A. I guess so.

Q. In other words, all these Conferences have a single [fol. 1654] Chairman, do they not, at one time?

A. No. As I say, these Conferences that are given a name, and an agreement is filed so as not to be held at all in violation of Section 15, were a matter of convenience administratively, and not strictly competitive Conferences.

Now, while I would be Chairman of the Trans-Atlantic Associated Freight Conferences, and the chief administrative officer of all Conferences functioning through that office, in respect of expense and the work, I might with respect to Freight Conferences use my time to two Conferences, let's say the United Kingdom and the Continental Freight Conference, and my assistant, Mr. Andrews, might have handled one of the Mediterranean Conferences, or the Baltic Conference, either as secretary or as chairman. Sometimes the various Rate Conferences did not select a permanent Chairman for the purpose of conducting the Rate Conference, and they would select their own Chairman at each meeting. They all had their own rules, and they are all set forth in their respective agreements.

Q. In other words, you might have been Chairman of the North Atlantic Continental Freight Conference and the Baltic Freight Conference, and Mr. Andrews, or someone else, might have served as the Chairman of the Mediterranean Conference, or some other Conference?

A. As a rule, where they didn't have a permanent Chairman, the lines themselves selected a Chairman for a meet- [fol. 1655] ing, or on a monthly basis, or on a rotating basis.

Q. Can you tell us whether, as a matter of practice, there is normally one man designated as Chairman for all of the Conferences?

A. For administrative purposes the Associated Freight Conferences served all those Conferences, and I was the administrative head of the Trans-Atlantic Associated Freight Conferences.

Q. But you suggest when it came to competitive matters, such as fixing freight rates, that where you might have functioned as Chairman of two Conferences, that your assistant, Mr. Andrews, would serve for the Meditteranean Conference or one of the others?

A. Well, we endeavored to split up the work within the office.

Q. Well, I ask those questions, Mr. Sinclair, because you testified that you had the chairmanship of the Trans-Atlantic Associated Freight Conferences as well as the North Atlantic Continental Freight Conference, and the Commission's pamphlet seems to show there is a common Chairman. They now list Mr. Andrews.

A. That is right. Mr. Andrews succeeded me.

Q. And I wondered whether in your day that practice was the same, and if you were officially designated Chairman of all the Conferences.

[fol. 1656] A. Haven't I made it clear in my answer?

Q. I am not clear whether or not you were officially the Chairman of all the Conferences, or whether Mr. Andrews served as Chairman as to some?

A. Mr. Andrews was not officially Chairman of any of the other Conferences. The permanent Chairman on the Rate Conferences, I believe, was—at least originally it was the United Kingdom and Continental Freight.

Q. I don't understand that answer. What do you mean, the permanent Chairman was those?

A. The North Atlantic United Kingdom and the North Atlantic Continental Freight Conferences functioned under the guidance of a permanent Chairman, and I was it. Other Conferences did not do so.

Q. And while you were serving in the capacity of Chairman of the United Kingdom and the North Atlantic Continental, you were also Chairman of this Associated Conferences?

A. I was general administrative officer of the Conference Office, and as such was Chairman of the Trans-Atlantic Associated Freight Conferences.

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Q. Mr. Sinclair, I would like to direct your attention briefly to your testimony at page 710 of the transcript, where, in response to a question by Mr. Hupper, you say:

> "I think the contract rate system has been looked [fol. 1657] into very thoroughly by representatives of the United States Government regulatory bodies, and has been found to be a benefit to the commerce of the United States."

I was wondering if you could spell that out and indicate what particular investigations you had in mind, if any?

A. Well, we had the so-called Raleigh Case, as I call it. We had a Freight Section 19 hearing, of which your client is thoroughly familiar.

Q. The Raleigh Case referred to, is that the Raleigh-Stoomvaart Case?

A. That is right. I think we had the Phelps Case.

Q. Which case is that?

A. It was the Mediterranean Conference. We had another little case called the United States Navigation Case. That wasn't against the Conference, but against the individual lines and me, personally.

Q. That is the old Cunard and United States Navigation?

A. That is right.

Q. The case never went before the Commission, did it?

A. The Supreme Court held that the Commission had primary jurisdiction, and that is where they had to go for relief in the first instance, at least.

Q. Did you have any other particular investigation or [fol. 1658] cases in mind?

A. No. There were—I think there was a case in the domestic trade where it was found that the contracts were not necessary by reason of other controls.

Q. Is that the Swayne & Hoyt Case you are speaking of?

A. Yes.

Mr. Hupper: Mr. McGovern, are you going to ask him about a docket entitled "Contract Rate Investigation"? Do you know about that?

Mr. McGovern: I know about it. I am asking the witness what investigations he had in mind.

Mr. Hupper: He is not supposed to deal with a lot of history.

Mr. McGovern: I am not asking for history. I am asking what, if any, particular investigations he had in mind when he gave the answer to your question.

The Witness: I may have described it improperly. When I referred to the Section 19 case, I was referring to the general investigation that was had, out of which came a requirement for the filing of tariffs 30 days after the event, which was resisted by your client for some time.

By Mr. McGovern:

Q. That is the case individually, in the Swayne & Hoyt case, is it not?

A. No.

[fol. 1659] Mr. O'Connor: That is Docket 128?

The Witness: Yes, sir.

By Mr. McGovern:

Q. You are referring to the so-called Section 19?

A. Yes. That is what I had in mind.

Mr. Galland: The Swayne-Hoyt Case had to do with intercoastal.

By Mr. McGovern:

Q. In any of these cases, was the Luckenbach Company involved, Mr. Sinclair?

A. In the Swayne & Hoyt Case, I believe, but otherwise not.

Q. That was the so-called Intercoastal Investigation, was it not?

A. Right.

Q. And you have testified, I believe, that the Luckenbach Lines have not operated in this North Atlantic Continental trade?

A. I didn't testify to that, because we used to operate, after the First World War we were quite active in the trade.

Q. But you were not associated with them at that time?

A. Not at that time. I was with the Shipping Board, as a matter of fact.

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Q. But during your period of connection in an official capacity with the Luckenbach Lines, have the lines ever operated in this North Atlantic Freight Conference?

[fol. 1660] A. Outside of bulk cargoes, no.

Q. To what extent have they operated in bulk cargoes?

A. Well, we have about 30 ships under charter of the Maritime Commission, about 20 of which have been employed from time to time in the bulk carrying trade—coal, grain—and some on a per diem charter to the Army.

Q. Does the Luckenbach Line charter some of its own ships to others?

A. Yes, sir.

Q. In so chartering, do you distinguish between Conference Lines and non-Conference Lines?

A. In filing the monthly affidavits with the Maritime Commission regarding operations and foreign affiliations, we have been able to say we have no foreign affiliations, and in some instances we have had charters with foreigns, and we gratuitously state our policy, which is that we give preference in our chartering to lines who are members of the Conferences.

Q. But you do not, as a matter of policy, confine your charters to Conference members?

A. No. I say we give a preference.

Q. As a matter of fact, though, you have chartered to independent non-Conference Lines, have you not?

A. We probably have. I might say I didn't know they were non-Conference Lines at the time that I did it, or I [fol. 1661] probably wouldn't have done it.

Q. At the present time, Mr. Sinclair, or since the time of your association with the Luckenbach Lines, can you state for the record what Conferences the Luckenbach Lines have memberships in?

A. We are members of the Intercoastal Freight Conference.

Q. Which foreign trade Conferences do you belong to, if any?

A. None.

Q. Are you a member of 4294, the Pacific Coast-Caribbean Conference?

A. Yes. I am sorry. That corrects the previous statement. We always think of this Intercoastal as embracing

adjacent calls, and when we commenced calling at Havana we were a member of that Conference.

Q. Can you state whether you are also an associate member of the Far East Conference?

A. I don't think we are.

Q. Would you like to examine this pamphlet of the Commission? (Handing document to witness.)

A. I don't know just what that means by "Associated Lines." We have for some time Section 15 Trans-shipment Agreements with the Far East carriers, and also with the Atlantic carriers, but those agreements—I don't know whether they are still in effect, but they have not been carried out in practice since the re-establishment of the service after the war.

[fol. 1662]

Q. And those trans-shipment arrangements constitute your only association with the Far East Conference, as far as you know?

A. That is right.

Q. Now, Mr. Sinclair, coming to your testimony at page 714 of the transcript, where you were discussing, in response to questions by Mr. Hupper, the degree of rate protection which a shipper obtains under this standard form of merchant contract, you were asked whether or not the shippers always were assured of the benefit of reduced rates. Rather, you stated that, and the question was:

> "And for the period that the contract applied, I take it they were assured the rate could not be increased?"

And your answer was:

> "That is correct."

Now, I wonder whether, when you made that answer, you had in mind the particular merchant contract which is in issue in this case? Have you had a chance to examine it? (Handing document to witness.) The rate clause I have sort of emphasized there in the margin.

A. The protection, I said, that was afforded to the shipper is embodied in the contract, in that the carriers agree

[fol. 1663]

that if any lower rate is granted to anyone, they will receive the benefit of it. That is the protection on the

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low side. As to stating that the Conference wouldn't increase the rate, that was stated, that they couldn't increase the rate without the shipper's consent, and bind the shipper at the same time to the contract. That is what I had in mind.

Q. Yes. But under the terms of the clause you have just read, the shipper's only recourse in the event the rate should be increased, and he doesn't wish to accept the increased rate, is to surrender his exclusive contract?

A. Not necessarily. If the shipper feels very strongly about not accepting it, and he gives his refusal, the Conference must then ponder the results.

[fol. 1664] Q. Assuming that is the case, and the conference has pondered, and come to a ponderous result, that they will insist on the entry, what then, in your opinion, is the shipper's alternative?

A. The agreement may be terminated.

Q. And if, as a matter of actual fact, by terminating the agreement, he is confronted with the necessity of paying the higher non-contract rate if he uses conference lines thereunder, what alternative is left to him?

A. I don't know what the situation may be at the time that he reaches his decision. You are dealing with——

Q. Regardless of what the situation is, I am talking in terms of the contract you have before you.

A. You must give me an actual situation, not a hypothetical one.

Q. I will give you an actual situation then. The temporary injunction in this case was not granted. This contract before you was in effect. I am a shipper. I have had the contract for two months, at which time the conference announced it was going to increase the rate on my product, leaf tobacco, that it is going from $2.25 to $2.65, and I object to the increase as being unreasonable. You, as Chairman of the Conference, ponder my objection, and *besides* your rate is satisfactory from the conference point of view, and you announce there will be no alternative except to accept the rate or surrender the contract.

[fol. 1665] Mr. Hupper: I object to the form of the question. He as Chairman of the Conference doesn't do any such thing. He submits the matter to the member lines.

By Mr. McGovern:

Q. You don't ponder the rate then, but you submit it for the pondering of the conference members, who, having pondered, indicate that it is an appropriate rate and that they will not maintain the existing rate of $2.25. You notify me of that, and I elect to cancel my contract. Now, if I ship over conference lines, from that point out what is the situation?

A. You ship over conference lines, that is all.

Q. At what rate?

A. You ship over the line that you book with.

Q. Yes, but at what rate?

A. You mean on the non-conference line or the conference line?

Q. No, the conference line.

A. Oh, if you ship by the conference lines you will pay whatever the non-contract rate is.

Q. That represents the same differential over the contract rate of $2.25 and the non-contract rate of $2.65 as to other articles?

A. I don't know. There again, you are guessing at what the situation may be.

Q. The testimony here by your successor in this conference is that the contract, non-contract rate system does [fol. 1666] entail a differential whereby the non-contract rates are scheduled at approximately 20 to 25 percent above the contract rate.

A. If that were the situation you would pay the rate which is that much higher.

Q. Or, as I understand, I would also be free to ship on a non-conference line?

A. Oh, yes.

Q. Now, the testimony here has been that prior to the issuance of the injunction approximately 3,000 persons out of a total number of 4,500 solicited returned these contracts signed. Let us assume as a result of the tieing up of the patronage of the trade that at the time that I elected to refuse to accept the higher rate there was no non-conference shipping available to me. What then would be my alternative to accepting your high rate?

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A. I can only say that I have never known of any such instance.

Q. Well, are you able to answer my question on the basis of the contract? I am merely attempting to find out as a shipper what my privileges would be under that contract?

A. I think it is very obvious that if the only line serving the trade was a conference line, and the shippers were not of sufficient volume to cause other outside lines to come in, by reason of their cancelling the contract then you would only have the conference lines to ship on.

[fol. 1667] Q. In the event that I didn't wish to accept that higher rate, my alternative would be to ship by the conference lines at the non-contract rate?

A. If that is your only method of shipping, I presume that would be the case.

Q. But specifically coming back to your testimony, I take it that when you said the shipper was guaranteed there would be no increase of rate for the period of the contract, you had in mind only the limited period entailed in exercising the cancellation period, is that right?

A. No. I meant the shipper could not be held to the contract by any arbitrary increase on the part of the conference. If he didn't agree to it, he had means of escaping the contract obligation.

Q. Yes, but I am directing attention to the degree of rate protection for forward trading that the shipper gets. Now, that rate protection does not exceed 80 days on the face of that contract, does it?

A. Well, I think the whole thinking seems to be going along the line that this is a vicious instrument imposed upon the shipper against his will. That is not so. I testified before, and I testify again, that this conference contract system was forced stability. It grew up and it was a rate conference, and still is between shippers and carriers. There was a very good performance record. The shipper was [fol. 1668] not bound to offer any particular amount of cargo to the line. The carriers were not obligated to offer any particular amount of shipping service. But the performance showed that there was the cargo, and that there was the service, and I think the shippers and the carriers rely more on that, on experience, than they do in written words you are talking about.

As a matter of fact, I recall the first time—not the first time, but one of our meetings with the packers in Chicago. I had been getting along for years on a good basis with the Traffic Committee out there of the institute, and this year, for some particular reason, they decided to have for their chief negotiator a lawyer, and instead of talking about freight rates, we talked about all the conditions under the contract, and the horrible things that could happen to a shipper——

Mr. McGovern: I assume, Mr. Examiner, that it is proper for me to arise to the defense of my profession in any aspersions cast upon it.

A. (Continuing.) No aspersions at all. I will give you the truth on this one. He wasted an hour or two hours' time talking about the horrible things that could happen to shippers under the contract, and I said to the gentleman—there were only two of us on the dais, and the room was filled with sales managers and traffic managers with whom I had been dealing on a very helpful basis for years, and I [fol. 1669] said, "Listen. These people out here in the conference lines understand each other. We have been doing business for years. We know each other's problems. If you think that contract doesn't say what we mean, you go and write the contract and we will take it."

There was great applause from the audience. Then we got down to the rate matters that we had come to discuss, and we got them settled.

That is why I say it seems to me the technical part of the contract is not the basis for this business.

By Mr. McGovern:

Q. Well, are you aware that an examination of the minutes of the North Atlantic Continental Freight Conference for the period March 2, 1946, down to the present time indicate this particular contract was largely composed by a lawyer?

A. There is no question about that. I didn't deny that. I said in the dealings between the shipper and the carriers, you are talking about the terrible position a shipper is in. I say the shipper is not in a terrible position at all, for in

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our relationships with the shipper for years, he understands us, and we understand him, and we try to get along together.

Q. I assure you I am not trying to bring vices home in this particular question, and I hope you are not trying to bring virtues home in this particular answer. I am asking you what is the fact on the face of that contract with regard to the rate protection the shipper gets?

[fol. 1670] A. You are asking me what might be the result in a particular situation.

Q. Not at all. I am not acting what might be. I am asking you what is provided on the face of the contract.

A. But you are digging up situations that never existed. I am telling you from practical experience we never found that situation to exist.

Q. Well, now, in the pre-war period the conference contract, with which you were familiar, did provide, did it not, for a period of protection of one year?

A. Oh, I think before the war we had very much the same provisions you have got in here—20 days, 20 days, 60 days.

Q. The contract in the pre-war period did not give a rate for a period of one year?

A. They were one-year contracts. They were calendar-year contracts.

Q. I am asking whether the rate protection contained in the contract in the case of increased rates did not lend an assurance to the shipper that the rates would not be increased for one year?

A. If the shipper wanted to trade for a year, and that was a gamble the conference wanted to take, he would be given that assurance, that he would have it for a year.

Q. If, in fact, it was your thought that there was an understanding or an appreciation between the carriers and the [fol. 1671] shippers that the protection here will be equally firm, why do you not simply state on the face of the contract there will be no increase in rates during the period of the contract?

Mr. Hupper: I object to the question as to what the contract form should provide. We are dealing with argument here.

Examiner Robinson: My objection to the question is

not to the relevancy per se, but the fact that Mr. Sinclair hasn't anything to do with the drawing up of this contract.

Mr. McGovern: We made the same objection, and you let Mr. Sinclair testify.

Examiner Robinson: No. You said why isn't something in here, and Mr. Sinclair is not concerned with that. If you asked Mr. Andrews, that is a different matter.

Mr. McGovern: I agree with that. Basically, Mr. Sinclair shouldn't have testified here, but here he is.

Examiner Robinson: There is nothing showing he drew the contract up.

Mr. McGovern: No, but he is here, and he has testified——

Mr. Galland: May I remind the Examiner I wasn't even permitted to examine Mr. Isbrandtsen as to what his objections were to the basic conference agreement.

Mr. McGovern: The basic conference agreement has never been an issue in this case.

[fol. 1672] Examiner Robinson: If you want to ask Mr. Andrews that question that will be perfectly all right. I have no objection to the question per se.

Mr. McGovern: I understand Mr. Sinclair is suggesting in response to the question that underlying the contract there was some sort of an understanding or appreciation or recognition, intangible, that is not on the face of the contract between the shipping public and the carriers. Now, my last question was directed to that point.

Mr. Hupper: If you want to make your contract over I will be glad to cooperate with you.

Mr. McGovern: I am suggesting that your witness says that regardless of what is in the contract there is an understanding.

Mr. Hupper: Why don't you talk to me as a lawyer?

Examiner Robinson: Ask him that in the abstract, then, based on his experience as a conference chairman. Go ahead.

By Mr. McGovern:

Q. Based on your experience as a Conference Chairman, Mr. Sinclair, if in fact it is the understanding between the conference and the shipping public that the shipping public

will be granted protection rate, protection for the period of the contract, why does not the contract so state?

Mr. Hupper: I object to the question. The contract says [fol. 1673] what it says. It is not part of Mr. Sinclair's function to change the contract or to suggest to other people how it should be changed.

Mr. McGovern: Mr. Examiner and Mr. Hupper, if this witness is incompetent to testify about the contract in issue in this case, and if it is so conceded, I will stop right now.

Mr. Hupper: I am talking about the irregularity of your questions.

Mr. Galland: I think the question is irrelevant anyhow, for it is perfectly clear that your client would not be in any way happier if this contract did contain the very things that you are now suggesting it should contain.

Mr. McGovern: It is unfortunate you cannot take the witness stand and testify. That is unfortunate. If the Examiner wants to do so, I will cross-examine you.

Mr. Hupper: If you are making a proposition to the shipper, that is something different.

Mr. McDowell: I think to the extent the witness is undertaking to testify to an understanding and an assurance furnished the shippers under this system, it certainly is proper to examine him.

Examiner Robinson: I'm inclined to let him answer if he knows, just from his general knowledge.

Mr. McGovern: May I also say, Mr. Examiner, the record [fol. 1674] reflects that Mr. Andrews testified this particular contract is merely a carrying forward of the contract in effect since Mr. Sinclair was chairman.

Examiner Robinson: Go ahead and ask the question.

By Mr. McGovern:

Q. If in fact, Mr. Sinclair, as you indicated, at this conference you had with this lawyer and this group of shippers that the carriers and shippers understand that by the contract system the carriers are giving the shippers rate protection for the period of the contract, why was that understanding not reflected in the contract that they were negotiating when you were the chairman of the conference?

A. I think the contract, or we felt the contract at that time, and I still think so, was a reasonable contract, considering all the phases of shipping, the shippers not having to guarantee any particular quantity to be shipped on any particular date, the conference lines having to meet all the changes in international conditions, and that it was a reasonable period for the conference to bind themselves and for the shipper to bind himself. It gave the shipper all the assurances possible that they would endeavor to list all the cargo that he shipped, that he should distribute the cargo equitably between the carriers, that if any other carrier joined the conference he should be free to participate in the traffic, and that if it was found necessary to advance the [fol. 1675] rates, and I guess we have been on a rising cost market for a long time, the shipper would be given reasonable notice, and he would have an opportunity to agree to the increase or to decline the increase. If he declined the increase, the conference had the right to give at least 60 days notice—they might see fit to give 90 days, or 120 days, but they had to give him at least 60 days notice. We think that was reasonable under the circumstances. But as I tried to point out, the relationships between the shippers and the conference over the years resulted in the shipper being able to go forward with a degree of confidence necessary in his business that he would have a service, that he would have reasonable rates, and he did get the service, and he did get the rates.

Q. Were you aware when Mr. Rosenthal of Stein-Hall testified here as a witness for the conference——

A. I wasn't here.

Q. Well, let me say Mr. Rosenthal testified when he talked about rate protection for forward trading he meant a guaranteed, assured rate for a period of one year. A period of 80 or 90 days was altogether too short to permit adequate forward trading.

Mr. Hupper: Just a moment. I don't think that question accurately reflects what Mr. Rosenthal said. I don't recall exactly, but I do however believe that is not accurate.

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By Mr. McGovern:

Q. Assume that is the case. I will check the record.

[fol. 1676] Mr. Galland: No, he can't assume.

Mr. Hupper: I think he favored a rather longer period, but I don't think it was the year.

By Mr. McGovern:

Q. Let us assume he favored a longer period for the time being than set forth in the contract. Is it your testimony that in the case of a shipper who says that 80 days protection or 60 days is not enough, and then he needs a longer period of protection, is it your opinion he can go to the conference and get a longer period of protection?

A. For instance, I don't think the conference would merely just have somebody say they wanted more time. They would have a discussion as to why he needed more time, what particular business he was working on, what is the situation, and the conference might at that time give him a specific authority to go ahead in an effort to close that particular business, and if that meant 6 months or 9 months guarantee of a rate, he would get it.

Q. In other words, in your judgment, if Mr. Rosenthal came to the conference—he is a large shipper for Stein-Hall, as you know—and testified that in a particular transaction that he had in mind that the 80-day protection here was not sufficient and he had to insist on having protection of at least six months, it is your judgment the conference should meet that request and give it to him?

[fol. 1677] A. The conference could give him an undertaking where they have a requirement to give at least 60 days notice. In that case he would not get notice short of that time on that particular business.

Q. Then what would happen with regard to all the other shippers who had signed the contract and had the understanding it protected them only to the extent of 60 days?

A. The shipper would be in the same position to negotiate with the conference.

Q. Possibly they would, but the other shippers signed this contract?

A. I assumed he himself had this contract.

Q. No. Assume he says he can't undertake to have a limited 60-day for it is not sufficient for his business. He has to have six months.

A. Oh, I was assuming you were talking about a shipper who had signed a contract.

Mr. Hupper: That is your question, isn't it? It relates to a shipper who signed this, Mr. McGovern?

Mr. McGovern: Just a moment, please.

By Mr. McGovern:

Q. The point I was coming to is this, Mr. Sinclair. I understood that your testimony, and in fact I understand that your successor's testimony, Mr. Andrews, is to the effect that in the case of a shipper who indicates when he [fol. 1678] is presented with this contract that he needs greater rate protection than the 60 days afforded him there, that there is no reason why the conference can't negotiate with that shipper a longer period of protection. Now, is that your view?

A. You are talking about shippers now who have signed the contract?

Q. A shipper who has not signed the contract, and is unwilling to sign it because the protection is not sufficient?

A. Well, I don't know. I don't think we have had any such situation. I don't know what the conference would do under those circumstances. I can visualize for you what might be the situation. I don't know whether the lines would go on this basis or not, that if a fellow had a particular business six months off, they might make a double obligation. They might give him a raise that was going to be good for that period to cover that specific business, provided he would obligate himself to ship that specific business.

Q. Well, he obligates to ship that specific business anyway when he signs the contract, doesn't he?

A. No, he doesn't obligate himself to ship any amount of business at all. That is the freedom he has under the contract.

Q. No, but he obligates himself to ship all the business?

A. Sure, and we wish him well. We hope he gets a lot of business.

Examiner Robinson: I think he means he guarantees [fol. 1679] a certain amount of business is going to be shipped. Is that what you have in mind?

The Witness: Yes.

By Mr. McGovern:

Q. You mean in the case of a man who gets more than 60 days protection he guarantees a certain tonnage?

A. You are dealing with things I didn't have in mind.

Examiner Robinson: Is that what you had in mind?

The Witness: I am saying that is one of the ways it could be of meeting one of the dreams we have here.

By Mr. McGovern:

Q. In the case of the man who has signed the contract, and who is then presented with the so-called reasonable rate increase which he is free to reject within 60 days, what happens to him if he indicates that he has made commitments on the basis of existing rates exceeding a period, let's say, of 120 days?

A. Well, generally, we would tell him that the conference usually takes care of its customers, and you will find that these shippers of like commodities usually in trade associations, and if not we know who they are, we have them catalogued by commodities, and it would be our practice to be sure that there was no advantage to any particular shipper under any extended agreement that we might make.

Q. Yes. You would want, for example, to be sure you [fol. 1680] didn't give advantage to a large shipper over a small shipper?

A. Definitely, or vice versa.

Q. Are you aware of the fact the record shows when the contract was presented to the trade to become effective November 1st, the National Automobile Manufacturers Association declined to sign effective November 1st, and they were granted an extension of time under the existing rate up to and including December 31st?

A. I take it that meant all automobile shippers.

Q. That is true. Now, do you regard that meant all manufacturers of the association, at least all the manufacturers in the association——

A. I understood all manufacturers belonged to the association.

Q. But not all shippers belonged to the manufacturers association. That is obvious, is it not?

A. Well, I don't know what the automobile association did on November 1st, or December 1st, or what the conference did.

Q. The record only shows that the conference agreed to give the automobile association an extension of time until December 31, 1948, to decide whether they wished to sign the exclusive patronage contract?

A. In other words, they didn't wish to press the issue at that moment, but to continue negotiations.

Q. That is right. Now, in your judgment, would that be unfair as regards other shippers who were compelled to [fol. 1681] sign a contract November 1st in order to obtain the existing rate after that date?

Mr. Hupper: I object to that question. There is not the slightest suggestion that any shipper any time was compelled to sign any contract whatsoever. The form of the question is improper, in my judgment, and I ask it be——

Examiner Robinson: Do you want to re-word it?

By Mr. McGovern:

Q. The fact of the matter is, Mr. Sinclair, I think this much at least you are familiar with, that those rates were on file with the Commission to become effective November 1st, and on and after November 1st there were then contract and non-contract rates applicable to the movement of the commodities. Now, any shipper who had not signed his contract by November 1st, of course, under the tariff, paid the non-contract rate from that date out, did he not?

A. If that tariff rate was maintained.

Q. Yes, but in the case of the automobile manufacturers they were extended by the conference a further period of 60 days, until December 31st, to ship under the existing tariffs without signing the contract?

A. I don't know what happened, but I assume the procedure would be to change the non-contract rate for that month to the contract basis.

Q. In other words, you would assume the conference

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[fol. 1682] would immediately notify all other shippers that the contract rate and contract system was not to become effective until December 31st?

Mr. Hupper: I object to the question. There is no basis for such an assumption.

Examiner Robinson: I think that is a good objection.

By Mr. McGovern:

Q. If the conference were to grant a large group of shippers such as the automobile manufacturers, an extension of time beyond November 1st, 1948, to December 31, 1948, to consider whether or not they wished to sign a contract in order to obtain the present existing rates, in your judgment would the conference be bound in all fairness to grant a like extension to all other shippers?

A. I would think they would if other shippers made a similar request.

Q. Now, in the pre-war period, were you chairman of the conference, the United Kingdom as well as the Continental ports?

A. Yes, sir.

Q. Well, I have before me, Mr. Sinclair, a copy of a contract dated January 15, 1932——

A. That is a long way back.

Q. It is a long way back. Let me show it to you and see if it refreshes your recollection, which would seem to indi-
[fol. 1683] cate those contracts at that time at least were firm contracts for a period of a year.

Mr. Hupper: Before you make an answer I want to look at that document.

(The document was handed to Mr. Hupper.)

By Mr. McGovern:

Q. Mr. Sinclair, that contract, I take it, to the United Kingdom in the 1932 period, was fairly well standardized in the North Continental Atlantic trade, was it not?

A. That is right.

Q. And in that period then, in 1932 at least, it apparently was the practice of the conference to negotiate merchant

contracts which gave these merchants an assured rate for the period, the entire period of the contract, is that not the case?

A. The wording in this contract would indicate the contract guaranteeing the rate for the full period of the contract. It doesn't have the clause which is in the present contract.

Q. Do you know of your own knowledge at what time the conference changed over from this fixed assurance of a certain rate to this new type of contract with the so-called escape clause for the increase of rates?

A. I think it appeared not too long after this. You see, this is right in the bad years, '32, and I think——

Examiner Robinson: Is this two different rates?

[fol. 1684] The Witness: This is the UK contract, but I think the form is pretty much the same.

As I say, we were in the bad times, and shortly after that they changed the gold content of the dollar, and things began to move up fairly rapidly in various directions price-wise, and I suppose it was at that time that they considered there ought to be some protection for increases.

By Mr. McGovern:

Q. Well, is it your recollection that that alteration in the form of the contract to protect the conference against increased costs occurred shortly after this, or some time just prior to the war when there was a threat at the outbreak of the war and costs began to rise?

A. I can't remember, frankly, when the change occurred.

Q. Now, Mr. Sinclair, at page 715 of the record, in response to the following question from your counsel——

Mr. Hupper: Whose counsel?

Mr. McGovern: Mr. Sinclair's counsel.

Mr. Hupper: He hasn't any counsel here that I know of.

By Mr. McGovern:

Q. In response to a correction from counsel, Mr. Sinclair, to the following effect:

> "Therefore the carrier must, in the nature of things, be opposed to monopoly, must it not?"

[fol. 1685] Mr. Hupper: Well, I object to questions about the law.

Mr. McGovern: But you asked the question.

Examiner Robinson: Read it again, will you?

By Mr. McGovern:

Q. The question by Mr. Hupper was as follows:

"Therefore, the carrier must, in the nature of things, be opposed to monopoly, must it not?"

And your answer was, at page 715:

"Very definitely."

That still is your answer?

A. It still is.

Q. I just wanted to be sure the record was clear.

On page 720 and page 721 of the record, Mr. Sinclair, you may recall there is a rather prolonged colloquy between you and Mr. Hupper as to whether or not the Army did not make contracts for a period in different areas at fixed rates. His question was:

"Well, you say a contract with them. Is it just for one ship, or does it cover a period?"

And your answer was:

"Oh, no, the Army makes a contract for a period in different areas at fixed rates."

And then Mr. Hupper's question was:

"That contract that is thus made, is that exclusive of [fol. 1686] other people carrying——"

And then apparently you interrupted and answered:

"Oh, yes."

Now, I just want the record to be clear about one thing. Those contracts you made with the Army are not in any sense of the word the exclusive patronage contracts we are talking about here, are they?

A. No. The Army will make contracts with certain carriers. I say they make it with certain carriers because they don't have it with all carriers, in a given trade. I believe the Army consigns to American ships, for instance, in a trade. But they do cover their shippers on the line at a fixed rate for a fixed period.

Q. That is a normal contract between .. shipper and a carrier, quite apart from the exclusive patronage contract?

A. Well, a normal contract is really a specific amount of

cargo on a specific ship. That is the normal contract. The Army contract, I would say, is quite an unusual contract.

Q. What I am coming to is, apart from the exclusive patronage contract, theoretically I could go to Luckenback Steamship Company and tell them over the period next year I expect to have 10,000 tons of leaf tobacco moving. What kind of a contract will you give me? I won't sign an exclusive patronage contract, but I am prepared to negotiate a contract to carry 10,000 pounds. Assuming you and I——

[fol. 1687] A. In the domestic trades we don't make contracts, because our rates may be changed by the Interstate Commerce Commission.

Q. Of course, we are talking about foreign freight.

A. You are talking about Luskenbach.

Q. Let's take a case in Havana. I am going to ship 10,000 to Havana. If you negotiate that kind of a contract with me, what is the type of contract you were talking about when you were dise-ssing these Army contracts?

A. You said we are members of the conference. I believe we are, and we would abide by whatever the conference rules are.

Q. The point I am coming is, when the Army negotiates that contract, that is actually a single contract that carries between yourself and the Army, is it not? For example, the Army under that contract with you would not be privileged to ship over other conference line at the same rate, would it?

A. I think the Army by its own wish confines its business to American flag lines in the trade, and I believe the American flag lines are recognized as having a status as berth operators in the trade. I don't think I could barge in in any particular trade where the Army has contracts and get any of the Army's business, even though I have American flagships.

Q. That is right, but the complainant in this case meets those requirements? It is a regular American flag berth [fol. 1688] operator in this trade?

A. I don't know whether they are operating all American ships or not.

Q. In this trade I assure you it is, and that meets your requirements?

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A. Yes.

Q. In any case, the Army contracts you were discussing were not the exclusive patronage contracts?

A. They were not these contracts, no.

Examiner Robinson: Let's have a short recess.

(A short recess was taken.)

[fol. 1689] Examiner Robinson: All right, gentlemen.

Mr. McGovern: Mr. Examiner, just one more question.

By Mr. McGovern:

Q. Mr. Sinclair, I want to have the record clear about one answer of your testimony.

You indicated, I understand, that in the event a shipper was to come to the Conference and demonstrate to the Conference that in terms of his peculiar problems he had to have rate protection for a longer period than the 60 days provided in the standard contract, in your judgment the Conference and the shipper could work out an amicable arrangement that would give him the required forward trading protection.

A. I thought that it was possible to work on an arrangement depending on the conditions, and that it could be worked on in such a way that there would be no discrimination as between shippers on the same commodity.

Q. Now, if such an arrangement were worked out between the Conference Lines and such a shipper, in your judgment, would that contract have to be filed with the Commission pursuant to Section 15, an- approved by it?

Mr. Hupper: I object to that question. It has no relevancy here. It is perfectly well known that these contracts don't have to be filed. The basic agreement is filed. It [fol. 1690] just happens that this one provides for a contract-non-contract that is filed and approved. Minor rate matters, or subsidiary rate matters, do not have to be filed, and everybody knows it, and he shouldn't ask that question.

Mr. McGovern: But I understand, Mr. Examiner, whether it is a matter of requirement or a matter of courtesy, the Conference does file this form of contract with the Commission.

Mr. Hupper: It is in its tariff.
Mr. McGovern: That is what I am coming at.

By Mr. McGovern:

Q. I want to know, Mr. Sinclair, whether you would feel it necessary to file a modification of that contract arrangement?

A. I wouldn't think that would be a modification, because it says the contract shall give at least 60 days.

Q. Now, I say, we are assuming the case of a shipper who does not have sufficient trade forward trading protection and who negotiates a contract with the Conference for, let us say, six months, in your judgment, would the Conference be required to file this arrangement pursuant to the filing of this earlier arrangement in their tariff?

A. I wouldn't think so, because this doesn't indicate in itself that the Conference might not give him a year's [fol. 1691] notice.

Q. I agree, but it does indicate, does it not, the Conference is bound to give him no more than 60 days' notice?

Mr. Hupper: That isn't right. It is bound to be no more than 60 days.
The Witness: They can't give him less.

By Mr. McGovern:

Q. Let me put it this way: They are bound to give him no less than 60 days' notice.

A. That's right.

Q. There is no requirement there that they give 61 or 62, or any longer period?

A. They may, however, under the terms of this contract; it is contemplated that perhaps they might.

Q. I agree with you, but now I am suggesting the case of a shipper who insists out of the exigencies of his business, upon having forward rate protection and an assured rate for a period of, let us say, six months, and the Conference decides that in view of his business conditions and complications that that is a reasonable arrangement, and they make it. Would that contract with that shipper be filed with the Commission as a modification of this standard form of contract?

A. I wouldn't treat it as a modification of this form of contract. It is an assurance to that shipper. I assume [fol. 1692] that there are other shippers similarly situated, and they can rest assured he is not going to get a notice of increase during that period.

Q. Well, the point I am coming at is, what assurance would other shippers similarly situated have if this arrangement were never filed anywhere for public inspection?

A. Oh, the Conference would certainly avoid any discrimination as between the shippers.

Q. Well, I am sure they would, but I want to find out if the other shippers would enjoy that assurance?

A. Well, I am sure the Conference would even go to him.

Q. You think the Conference would assume itself the burden of calling in the shippers of that class and give them six months' protection?

A. I certainly think if I were Chairman of the Conference I would avoid any possible charge of discrimination or favoritism.

Q. Yes, I am sure you would, and I am merely suggesting that isn't the easiest way to do that, to file the modified arrangement with the Commission so it will be open for the inspection of other shippers?

A. We are in the air again, dealing with situations that don't exist. I don't know what the actual conditions are that we are going to deal with, and what we would do at a particular time under certain circumstances. I can't answer [fol. 1693] that type of question. I say that it hasn't happened, that the Conference would be sure, I am positive the Conference would be sure to protect all shippers, that there would be no favoritism charged against the Conference, and no discrimination.

Examiner Robinson: Of course, what discourages me in the particular question is that no matter what Mr. Sinclair thought, he unfortunately, or fortunately, as the case may be, has nothing to do with the present operation, and it would all be speculative, because Mr. Andrews would be the one to do it.

Mr. McGovern: I think that is a very pertinent observation, Mr. Examiner, in the face of that observation which you have made before, and certainly I have myself, and I

move at this time now, in accordance with my earlier objection before I began cross-examination of Mr. Sinclair, that all of his testimony be stricken and expunged from the record on the ground it is irrelevant to the issues in this proceeding.

Examiner Robinson: Motion denied.

Mr. McDowell: I would like to make the same motion, with the additional observation that it should likewise be made on the ground of competence.

This witness reveals he has not been connected with this [fol. 1694] trade for a period of at least six years, that he is engaged in intercoastal trade in which this system is not applied, and therefore it appears quite likely that he is not competent to testify with respect to the issues in this proceeding which involves the attempts of the Conference Lines to put the exclusive patronage contract system into effect in this trade last year.

Examiner Robinson: That motion is also denied, and on the side, I might say I appreciate what you have in mind, of course, but I deny the motion.

Mr. Hupper: Well, I will just make a repeat observation. Our friends here are very eager to get the facts, and when they get them and they don't like them, they say everything is incompetent because he doesn't agree with their point of view.

Examiner Robinson: Is there any further cross-examination?

By Mr. O'Connor:

Q. You have chartered ships to Isbrandtsen, have you not, your company?

A. I don't think I have ever had the pleasure of a charter with Isbrandtsen. We have negotiated and talked about it, but we have never come to a charter, as I recall it.

Q. Are you sure of that?

A. Are you talking during my period, my regime?

Q. Well, shortly after World War II, didn't your com- [fol. 1695] pany charter some ships to Isbrandtsen?

A. Oh, they may have. I thought you were talking about during my regime.

Q. Which were used in this North Atlantic trade?

A. Oh, that is possible.

Q. You are not familiar with that?

A. No, sir. I don't think that while I have been there Isbrandtsen had any——

Mr. Hupper: You are talking now of being with the Conference, or with Luckenbach?

The Witness: With Luckenbach. Well, I won't swear on a stack of Bibles either, but if you ask me, that is certainly my recollection of it, because it wouldn't fit in with the policy previously stated.

By Mr. O'Connor:

Q. What policy was that?

A. I said that we gave a preference to those who are members of the Conferences, and we have no trouble in chartering ships.

Q. That means that you wouldn't charter an independent?

A. I didn't say that. I didn't say that.

Q. What caused you——

Mr. Hupper: Have you a particular ship in mind, Mr. O'Connor?

By Mr. O'Connor:

[fol. 1696] Q. (Continuing.) What caused you to arrive at that preference?

A. Because I think Conferences are good for the business, and I don't think the rate-cutting is good for the business at all.

Q. You don't believe there should be any independents in the trade at all?

A. I don't say that. I might even think that independents were good protection, but usually they keep growing, and more people feel the need of becoming independents and having the flexibility that the independent enjoys, and then the boom falls and we have another great period of chaos and new reconstruction.

Q. Do you object to the independent if he charges the same rates as the Conferences?

A. No, I have no objection, Mr. O'Connor, to an independent at all. I think a person should have a free choice

of how he conducts his business. If he desires to be independent, he is independent; if he desires to join the Conference, he joins the Conference. It is all voluntary. But I don't think that the independent should expect to enjoy his independence and the things that go with that independent operation and, at the same time, try to interfere with the things that should go with stability in a Conference.

Q. Just what way does he interfere with that?

[fol. 1697] A. Trying with this injunction to prevent the Conference from maintaining the stability which is very necessary to the existence of the Conference.

Q. You mean, trying to prevent the Conference from signing up all the shippers in that trade and monopolizing the trade?

A. I don't think that is monopoly at all, because he can join the Conference.

Q. Oh, that is the sole remedy that you hold out to him, to join up with the Conference?

A. Well, you state yourself Isbrandtsen has been here since 1931, and we have had the contract system for a long time, and it apparently hasn't driven Isbrandtsen out of the business.

Q. But you are very much annoyed with his operations as an independent, aren't you?

A. Kind of irritating.

Q. Yes. You have been quite outspoken about him, haven't you?

A. Why, I suppose you read the record of 128, and I suppose you will probably find I said a lot of things about Isbrandtsen and others.

Q. Well, you wouldn't want to put the things on this record, the things you said about Isbrandtsen outside, would you?

A. I don't think I have said anything libelous about [fol. 1698] Isbrandtsen, either outside or inside.

Mr. Hupper: If you have anything that you want to put to him as to what he said outside, you ought to put it to him now instead of just loose talk.

Examiner Robinson: Yes, I agree with that. I will let you ask him. I don't think we ought to beat around the bush about it.

Mr. Hupper: If you want to, go ahead; if you don't, withdraw it.

Mr. O'Connor: Withdraw what?

Mr. Hupper: An insinuation that he said something outside unfavorable to Isbrandtsen being in business.

Mr. O'Connor: Well, I think he said here that he was an opportunist, and so forth, and was a menace to the stability of the trade.

Mr. Hupper: All right, but you said he said something outside. Now, I put it to you, put the question to him as to what he did say outside that you object to, if you have got anything, so that is cleared up right on the spot.

By Mr. O'Connor:

Q. You don't recall any comment you made about Mr. Isbrandtsen outside?

A. I don't think that I made any comments about Mr. Isbrandtsen outside to which Mr. Isbrandtsen could take offense.

[fol. 1699] Examiner Robinson: Are there any further questions on cross-examination?

Mr. Cockrum: I don't think so.

By Mr. Malatzky:

Q. When a firm or a shipper asks for a rate change or rate reductions, it is ordinarily the practice to advise him by specific letter that the rate reduction has been granted, I believe you will agree with that?

A. I think that probably would be the case.

Q. Does the Conference ordinarily advise all other shippers of that commodity of that rate reduction?

A. Oh, yes.

Q. I beg pardon?

A. Yes.

Q. They did that during all the period that you were in that trade?

A. That is my impression.

Q. Is that your definite recollection?

A. Yes.

Q. It is not mine, but——

A. Well, you are not on the stand. It is mine.

Examiner Robinson: Are there any further questions?

Mr. Galland: Yes, a few.

By Mr. Galland:

Q. I understand you have an appointment at twelve o'clock.

[fol. 1700] A. I have got to sign up for a couple of ships at the Customs House at twelve o'clock.

Q. I will be through in about five minutes.

During the period before World War II when Isbrandtsen was competing as an independent alongside the Conference and the Conference has the contract rate system, is it your recollection that the bulk of the trade, regardless of the number of commodities involved, was subject to Conference rates?

A. I would say that is correct, the bulk of the trade.

Q. Are you in a position to say percentagewise how much of the revenue of the Conference Lines was derived from transportation of commodities subject to Conference rates?

A. I am afraid I couldn't give you that very accurately at this time.

Q. Now, on this question as to monopoly, if one regards the Conference Lines as a unit, isn't it true that an exclusive patronage contract with the Conference is at least monopolistic in its tendency in that it makes outside competition a lot harder for the outsiders?

A. Well, that is a point of view, as to whether it makes it harder or easier for him.

Q. Well, now, what could possibly be said in support of the proposition that an exclusive patronage contract system makes it any easier for Mr. Isbrandtsen to function outside [fol. 1701] the Conference?

A. The lines having the contracts and having the rates stabilized are very reluctant to change rates. If they didn't have the contract system, there would be a free for all, rates would be changing over night and shippers wouldn't know what was going to happen, and Isbrandtsen wouldn't enjoy that so-called umbrella that we have out there.

Q. The point being, it gives him a place under the rate umbrella?

A. Yes.

Q. And perhaps a higher rate level that he otherwise might have?

A. It gives him flexibility under there. He can go anywhere he wants to. If a particular ship is doing very badly and if, on this ship, he thinks that by cutting further he might get the full cargo, he is perfectly free to do it.

Q. But it is certainly true, is it not, that the contract system, when it is in force and contracts are signed by large numbers of shippers, it definitely makes it harder for Mr. Isbrandtsen to get business? It is intended to do that, isn't it?

A. It is intended to reserve to the Conference Lines the business of all the shippers they can make contracts with.

Q. It is the Conference's method of expressing its objective to lay its hands on all the traffic it can get, is that [fol. 1702] right?

A. That is right. They would like to have complete stability in the trade, and therefore they feel if they can contract all the business at fixed rates, that there is stability as between the carriers and as between the shippers.

Q. And the more—the closer the Conference comes to getting all of the business, the better the Conference rate system is serving its objective, isn't that correct?

A. That is my opinion, yes, and all are free to come in and enjoy it.

Mr. Galland: That is all.

Examiner Robinson: Are there any further questions?

Mr. McDowell: On these last few questions by Mr. Galland, I would like to pursue that a minute more, Mr. Sinclair.

By Mr. McDowell:

Q. You say, I think your last answer there was that the closer the Conference comes to signing up all the shippers in the trade, the closer it comes to accomplishing the objective of stability, is that right?

A. That is right.

Q. And, of course, the obverse of that coin is that the closer it comes, then, to accomplishing stability, the more

[fol. 1703] it limits the number of shippers to whom the independent operator may have access, is that not true?

A. No, the independent operator can join the Conference and have access to all shippers.

Q. Well, I mean, without joining the Conference.

A. Yes, but that is the choice of the independent line. It is not forced on him at all.

Q. Yes, legally, he is free to stay out of the Conference if he desires to do so.

A. Or come in, either way.

Q. But if he does choose to stay out of the Conference, assuming that he does choose to stay out of the Conference, then the further the Conference goes towards accomplishing stability by signing up shippers, the more limited becomes the number of shippers to whom the non-Conference operator may offer his services.

A. That is correct, and, conversely, the more business he ties up with his line, the less there is for the Conference. [fol. 1704] Q. Yes, of course, that follows. But the more shippers then, who are tied up with the conference, the greater the pressure is on the independent lines who offer rate reductions as an inducement to secure traffic, is that not true?

A. Well, I suppose he is human, and he would endeavor to get the best revenue on any particular ship he could.

Q. To the extent that he is able, then, to secure traffic by or is required to offer rate reductions as an inducement to shippers to give him business, that is a factor making for instability, in your judgment, is that correct?

A. I think that it would most assuredly lead to great instability, and it leads to other bad practices which are not in the interests of the shipper, such as excessive brokerages which are paid.

Examiner Robinson: Have you anything else, Mr. McDowell?

Mr. McDowell: No, that is all.

Mr. Hupper: Thank you very much, Mr. Sinclair.

Examiner Robinson: Is that all? Has everybody had everything they want?

(No response.)

(Witness excused.)

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Mr. O'Connor: Mr. Examiner, I have had copies made of those two exhibits which I took home with me, Exhibits 21 and 22. (Copies of exhibits distributed.)

[fol. 1705] Examiner Robinson: Now, what is the program, gentlemen?

Mr. Hupper: Mr. O'Connor, I would like to get Exhibits 18 to 20 for identification presented here yesterday.

Mr. McGovern: Oh, Exhibits 18 to 20 we did not put in evidence, Mr. Hupper.

Examiner Robinson: No, only for identification. He wants to see them.

Mr. McGovern: The witness read them into the record, and I don't have additional copies.

Mr. Hupper: Mr. O'Connor, was the form of the 1932 contract which was shown to Mr. Sinclair marked for identification?

Mr. O'Connor: I don't think so, no.

Mr. Hupper: Have you got that there with the letter?

(Mr. Malatzky handed some documents to Mr. Hupper.)

Mr. Hupper: I will ask Mr. Malatzky to take the stand.

Hymen J. Malatzky was sworn and testified as follows:

Direct Examination.

By Mr. Hupper:

Q. Mr. Malatzky, kindly give your full name?

A. Hymen I. Malatzky, 82 Wall Street, New York.

[fol. 1706] Q. What is your business?

A. I am an exporter and forwarder.

Q. And what else?

A. I also do claim adjustment work in foreign trade.

Q. Is that the basis of your being described as "Three-in-one"?

A. I understand that you are responsible for that comment, and I will ask you to answer that.

Q. Now, you don't deny it?

A. No.

Mr. O'Connor: I have heard that expression, and I would like to know what it means in common parlance. Would you explain what you understand "three-in-one" to mean?

The Witness: Well, it is a trade name for one thing, oil, but I don't think that is what Mr. Hupper is referring to, but I do business as Himala International, that is export, and import, merchant, primarily export, I do business as Bergen Shipping Service, which is export forwarding exclusively, and about a year or so ago, to take care of a certain bit of work that was developing much more so than I had ever anticipated, I formed Maritime Audit & Adjustment Service for the purpose of handling claims against ocean carriers and insurance companies, marine insurance companies.

Mr. McDowell: Is there anything derogatory about the expression?

[fol. 1707] Mr. Hupper: No, not at all.

Mr. McDowell: No more than describing counsel, Mr. Hupper, for example, as "two-in-one" because he is the lawyer for the conference and executor for the Luckenbach Lines.

Mr. Hupper: Certainly not.

Mr. O'Connor: It is certainly intended to be an aspersion being used before the Maritime Commission, and if I were you, Mr. Malatzky, I would resent it.

The Witness: I do resent it, but it has come up so often.

Mr. O'Connor: I think, Mr. Examiner, it shouldn't be bandied about any more.

Mr. Galland: Do you feel he used the word as you used the word "professor."?

Examiner Robinson: Gentlemen, let's go on. Mr. O'Connor, I appreciate your remarks, but after all, you are not counsel for this witness.

Mr. O'Connor: Well, I think he is entitled to a little better decent treatment.

Examiner Robinson: I agree with you, and I am sure Mr. Malatzky will agree with me that he knows he is going to get good consideration, as he always has at my hands, is that not true?

The Witness: Very.

Mr. Hupper: I may say there is no aspersions. I be-

[fol. 1708] lieve the Examiner himself rather delicately used the same expression.

The Witness: No, I just want the record to show I do resent that particular term.

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Mr. Hupper: All right, now, you can do all the the resenting you please, but you see, you are an exporter, you are a forwarder, and you are a claim agent, and there is no aspersion intended in that description.

Mr. McDowell: I object to that.

Examiner Robinson: All right, now that we understand——

Mr. Cockrum: May the remark be physically expunged from the record?

Examiner Robinson: No, we all understand there was a statement, and we are not going to refer to it again, so let's go on from that point.

By Mr. Hupper:

Q. Mr. Malatzky, did you produce from your files here this morning what purports to be a contract dated January 15, 1932?

A. No, sir.

Q. Together with what purports to be a letter dated January 15, 1932?

A. No, sir.

Q. Did you not just hand those items to me?

I show them to you. (Handing documents to witness.)

[fol. 1709] A. I handed them to you just now at your request.

Q. Did you take them out of papers that you brought here?

A. Just now?

Q. Yes.

A. Yes, sir.

Mr. Hupper: I ask to have the two documents marked in evidence, Mr. Examiner.

Examiner Robinson: In full evidence?

Mr. Hupper: Yes.

Examiner Robinson: Is there any objection?

Mr. McDowell: I would like to examine them.

Mr. McGovern: No objection.

The Witness: If these gentlemen don't object, I will remove my objection. I just want it noted that I was not here this morning, that I have no idea for what reason it was

produced or what the nature of the testimony regarding it was.

Mr. McDowell: I have no objection.

Examiner Robinson: They will be marked Exhibits 23 and 24. The letter of January 15, 1932 will be 23, and the contract dated January 15, 1932 will be 24.

(Documents above referred to were marked Exhibits 23 and 24 in evidence.)

Mr. Cockrum: I suppose we will receive copies, Mr. Hupper?

[fol. 1710] Mr. Hupper: This is the only copy.

Examiner Robinson: The rule is, provides whoever puts them in has to furnish copies to everybody.

Mr. Hupper: Well, we will furnish copies. I state that these two exhibits, 23 and 24, will be copied and copies furnished to the several participants in the proceeding.

By Mr. Hupper:

Q. Mr. Malatzky, are you the Bergen Shipping Service or connected with it?

A. I do business as Bergen Shipping Service.

Q. That is a trade name, is it?

A. A name filed with the County Clerk in accordance with the law.

Q. In New York County?

A. In New York County.

Q. Now, as Himala International, you make shipments, do you?

A. I do.

Q. As the Bergen Shipping Service, do you get brokerage from steamship companies on shipments that you make over their lines?

A. I do.

Mr. O'Connor: Mr. Examiner, I don't know what the materiality of this is. I understand it has been gone into in other cases, but I don't know what it has got to do with these particular conference agreements, of this particular [fol. 1711] contract system.

Examiner Robinson: I don't know either, until we find out.

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Mr. O'Connor: At this point, unless he ties it up with the contract system, I move you hold in abeyance a motion to strike it from the record if it is not tied up.

Examiner Robinson: There has been no motion, but I will be glad to hold it in abeyance.

By Mr. Hupper:

Q. When you make shipments over the conference lines members you receive brokerage from them, do you?

A. I do.

Q. At one and one-half percent?

A. One and one-quarter.

Q. And when you make shipments over the line of Messrs. Isbrandtsen, the complainant here, you receive brokerage from them, do you?

A. I don't make shipments over the lines of Isbrandtsen.

Q. Never have?

A. Not in this territory.

Q. From other territories?

A. In another territory.

Q. Their brokerage is what, two and a half?

Mr. Cockrum: I object to that, Mr. Examiner. I would like to have a ruling at this point.

[fol. 1712] Examiner Robinson: On what grounds?

Mr. Cockrum: On the ground that it is immaterial. We are dealing with the North Atlantic trade. The witness has responded that he does not do brokerage business with Mr. Isbrandtsen in this trade.

Examiner Robinson: Objection sustained.

Mr. Hupper: You are very exclusive when you get to dealing with Isbrandtsen.

By Mr. Hupper:

Q. At this time, Mr. Malatzky, do you hold a contract from the respondent lines here as concerns the Continental trade?

A. I merely have the form; I have not signed it or returned it.

Q. When did you get that form, do you recall?

A. I think it was in October or September, just came in the mail.

Examiner Robinson: 1948?

The Witness: 1948.

By Mr. Hupper:

Q. Did you hold contracts generally throughout the '30's with the respondent lines?

A. To the best of my recollection, no. I may have, I am not absolutely certain.

Q. Now, did you produce from your files here at my request this morning, the documents marked 18, 19, and 20 [fol. 1713] for identification?

A. I did.

Q. Will you kindly glance at them? (Handing the document to the witness.)

A. (Examining the document.)

Q. And you have glanced at them?

A. Well, I see that they are the photostats that I handed to you this morning.

Mr. Hupper: I ask to have those marked in evidence, Mr. Examiner.

Examiner Robinson: Is there any objection?

Mr. McDowell: I would like to examine them.

Mr. McGovern: The only possible objection, Mr. Examiner, goes to the question of loading the record. The witness, Mr. Andrews, read them into the record yesterday.

Examiner Robinson: I don't think he read them all, sir.

Mr. McGovern: My recollection is quite clear, I proposed to offer them.

Examiner Robinson: Did you——

Mr. Andrews: I don't think so, I don't think I read the last one.

The Witness: Are you referring to Exhibit 20? You definitely read the last one.

Mr. Hupper: Well, I want them in as exhibits.

[fol. 1714] Mr. McDowell: Well, I have no objections.

Mr. McGovern: No objection. The only objection is duplication of the record.

Examiner Robinson: We will mark them, then, as Exhibits 18, 19, and 20, and they will be received.

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(Documents above referred to, previously marked for identification, Exhibits 18, 19, and 20, were received in evidence.)

By Mr. Hupper:

Q. Mr. Malatzky, you were here yesterday, were you, when these documents now marked Exhibits 18, 19, and 20 that you have produced were shown to Mr. Andrews while on the stand?

A. I was.

Q. Do you recall his testimony about them?

A. Substantially.

Q. Did you have some connection or relationship with Messrs. Joseph Turner & Company?

[fol. 1715] A. Not as Himala International.

Q. I beg pardon?

A. Not as Himala International.

Q. In what capacity did you have some connection or relationship?

A. Bergen Shipping Service is the forwarding agent for certain Greek firms, and was instructed to get a shipment from Joseph Turner & Company and forward it on.

Q. And that was your relationship to Messrs. Turner & Company, and that is all, is it?

A. If that can be called a relationship.

Q. Now, is the subject matter of those three documents, Exhibit 18, 19 and 20, the ones that you gave testimony about in Mimala International against American Export Lines, Docket 681 of the Maritime Commission?

A. It was American Export Lines, et al.

Q. That was under date of November 23, 1948, was it?

A. 22nd or 23rd.

Q. I ask you to look at the testimony on pages 108 to 109, your testimony then given, and I ask you to read there from the bottom of page 108 where I have marked a bracket to the end of the second paragraph on page 109 where I have marked a bracket.

Mr. O'Connor: May we see it?

Mr. McDowell: May we see it?

[fol. 1716] Mr. O'Connor: I want to see if I have an objection to it.

(The document referred to was examined by counsel.)

Mr. O'Connor: Are we to understand that this prior testimony, Mr. Malatzky, has any connection with these three exhibits?

Mr. Hupper: Yes, it relates to the matter that was brought up in the testimony of Mr. Andrews yesterday when the exhibits were marked for identification, and have now been marked in evidence.

Mr. O'Connor: I submit to the Examiner there is nothing, no suggestion that there is any connection with that testimony and these three exhibits.

Mr. McDowell: Before the Examiner rules on the matter, may we have an opportunity to see it?

Examiner Robinson: Yes.

Mr. O'Connor: It is just some general statement, apparently, that Mr. Malatzky made.

Mr. Hupper: Well, I will hook it up all right.

Mr. McGovern: May we at least have a statement from counsel, Mr. Examiner, as to what he thinks this line of testimony will adduce in reference to this proceeding?

Mr. Hupper: It relates to this matter.

Mr. McGovern: What is your purpose? Are you trying to impeach——

[fol. 1717] Mr. Hupper: You wait and see. I don't have to disclose my purpose. You put these exhibits in for identification and didn't put them in. I put them in.

Mr. McGovern: We are now asking for a tender of proof from you.

Mr. Hupper: You are going to have it right away. It was brought forward by the complainant's counsel.

Mr. McGovern: Complainant's counsel, Mr. Examiner, brought forward two documents written by the Secretary, and now the Chairman of the Conference, who was on the stand at the time.

Any documents written, of course, by respondents in a case is an admission against the respondents, and he was cross examined with regard to it.

Now, it is familiar law that the so-called provenience of documents is utterly immaterial to impeach the documents. If we had found these documents out here in the street it would make no difference, make no difference where we

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got them. It is clear that what counsel is trying to do is impeach the documents.

Mr. Hupper: It won't take long; just a minute.

Mr. McGovern: I am asking for an offer of proof——

Mr. Cockrum: At this point, Mr. Examiner, I am going to object to having that read into the record.

Examiner Robinson: Well, I will let him read it, subject [fol. 1718] to connection. If he doesn't connect it, I will strike it out.

Mr. McDowell: I submit, Mr. Examiner, in view of the contents of the matter which the witness is being asked to read, that it would be appropriate to have a tender of proof from counsel before the matter *of* permitted to go into the record.

Examiner Robinson: Well, I can ask him, and if he doesn't want to tell me, I can't hold him for contempt on a thing like that, but I can strike it out if he doesn't connect it up.

Mr. McGovern: Or sustain the objection.

Examiner Robinson: That's right.

Mr. McDowell: I think he should make a tender of a linking up in advance.

Mr. Hupper: You run your own case, and I will run mine the best I can.

Examiner Robinson: Can't you state what the purpose is?

Mr. Hupper: Not yet. I want him to read it.

Mr. O'Connor: I object.

Mr. Cockrum: I am going to object.

Examiner Robinson: Just a minute. You can have your objections, and let's see what it is and I will rule on it.

[fol. 1719] The Witness: May I say something first, Mr. Galland? You may wish to object on my behalf. This is listed, if I just read the few paragraphs, it is listed out of its text. It has no meaning by itself, unless the entire situation that came up right here is read in its entirety.

Examiner Robinson: Since I don't know what it is, I don't know what the whole thing is, or any part of it, I can't rule on it.

Mr. McGovern: Now, for the record, Mr. Examiner, I object to this witness being allowed to read an extract of testimony from another proceeding, unless counsel is prepared

to make a tender of proof and give us a chance to intelligently rule upon the objection.

Examiner Robinson: Well, I can rule on it just as well afterward. I won't strike it from the record, but I can say the objection is sustained.

Mr. McGovern: That is the point I am coming to.

Examiner Robinson: That is nothing unusual under administrative practice.

Mr. McGovern: That may be not in this instance——

Examiner Robinson: I am talking generally.

Mr. McDowell: Mr. Examiner, I have a very definite and serious objection to having the witness read this into the record, and if I may be permitted to collaborate with Mr. [fol. 1720] Galland for a moment in representing the witness, I think the witness ought not to be permitted to read this into the record on the ground that it might tend to incriminate or degrade him.

Mr. Hupper: There is no suggestion of that kind.

Examiner Robinson: Well, I don't see where that follows. Go ahead. Let's find out what it is, and if it is no good, I will sustain the objection to it.

By Mr. Hupper:

Q. Kindly read what I have marked between those brackets.

Mr. Cockrum: Excuse me just a minute, Mr. Examiner. You mean by that that you will have this portion physically expunged from the record?

Examiner Robinson: Not necessarily physically expunged. If I sustain the objection to it, I cannot use it anyway.

Mr. Hupper: It is already in one record.

Mr. McDowell: And do you also mean, sir, that by your earlier rulings any matter tendered in the record will go in, although you may subsequently object to its admission, but you will let it stay in the record?

Examiner Robinson: Not physically. If I sustain an objection, I certainly feel I have no right to use it in writing a report on it. I would certainly be remiss in my duty if I did.

[fol. 1721] Mr. O'Connor: Well, of course, it certainly is

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a common practice in all Courts with which I am familiar, and I will confess lack of familiarity with administrative procedure, but certainly the injection into the record of something like this which might be highly objectionable, and so forth, is often stricken from the record. I don't think you lack power to physically strike something.

Examiner Robinson: Well, the thing is, I don't know what this is leading to. Now we will work from that point on.

Mr. McDowell: I ask, Mr. Examiner, that counsel be compelled to make a tender of proof in advance so that the ruling of the Examiner may be made prior to the time that this material enters the record.

Examiner Robinson: Well, he said he won't do it, and I don't feel disposed to make any counsel do anything he does not wish to do.

Mr. McDowell: I think it ought to be excluded.

Examiner Robinson: I can't tell what it is unless he proceeds with his examination.

Mr. O'Connor: May it please the Examiner, I have had lots of experience presiding as referee, and I don't think a referee in any Court would permit the continuation of the examination if the counsel did not make his offer of proof. That would end it.

[fol. 1722] Examiner Robinson: I have often not made a person say what he intends to prove if he assures me he will connect it up, and subject to my ruling later on, if he doesn't connect it up. There is nothing unusual about that.

Mr. O'Connor: Connecting up isn't identical with this particular situation.

Examiner Robinson: Now, we have the ruling, right or wrong. Now let's go ahead.

The Witness: Well, I repeat that this extract from the entire evidence given in the previous proceeding has no meaning unless all the facts are known by its total meaning.

Mr. O'Connor: If you feel it is highly objectionable, you can refuse to read it.

Examiner Robinson: Yes, I can't make him read it.

The Witness: I can refuse to read it?

Mr. O'Connor: Yes.

The Witness: I refuse.

Mr. Hupper: O. K. In order to connect this up, and

it is obviously directly connected up with the evidence given here yesterday——

Mr. O'Connor: You have just wasted a half-hour. You are calling him solely for the purpose of——

Mr. Hupper: Suppose you give me a little time. It will [fol. 1723] only take me two minutes to wind this up.

Mr. McGovern: May I have a tender of proof?

[fol. 1724] Mr. Hupper: I will say, Mr. McGovern, that yesterday you handed Mr. Andrews these three documents, and they were marked for identification. You did not proceed to mark them in evidence. You were content just to show a little flurry with Mr. Andrews.

Mr. McGovern: Now, I resent the implication of that, because I will assure you that when this record is examined you will find Mr. Andrews read every word of those three documents into the record.

Mr. Hupper: I have already had them marked in evidence in the form in which they are. You didn't see fit to do so. That is your privilege.

Examiner Robinson Well, Mr. Hupper, go ahead.

Mr. Hupper: In the course of Mr. Andrews' testimony, there was a colloquy engaged in by the Examiner, Mr. Andrews, and Mr. Malatzky in relation to the items that were referred in these three exhibits, and I intend to have the situation entirely clear, and since Mr. Malatzky declines to read the testimony that he gave in another proceeding, Docket 681, last November, I will ask him a question.

Mr. McGovern: Now, as to that, may I say yesterday when that colloquy occurred, Mr. Examiner, you recall I objected in the midst of my examination of a witness in connection with this proceeding to having another proceeding over here presently pending before the Commission injected into the middle of it. I have no objection to Mr. [fol. 1725] Hupper involving himself in some other proceeding if he wishes to in examining Mr. Malatzky, or anything he wishes, but this is a proceeding involving the North Atlantic trade.

Examiner Robinson: I still go back to what I said. I don't know what Mr. Hupper is going to say.

Mr. McGovern: But you have a sufficient statement now on the basis of his tender of proof to indicate that connec-

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tion with this. He wants to pursue an irrelevant subject that was injected into the testimony.

Examiner Robinson: Let us see if it is irrelevant.

Mr. Hupper: It is not irrelevant at all, it is related to something you brought up in relation to Mr. Andrews, which I hadn't touched, to embarrass us somewhat.

Examiner Robinson: All right, Mr. Hupper, proceed.

By Mr. Hupper:

Q. Mr. Malatzky, I ask you whether or not on Tuesday, November 2, 1948 in a proceeding before the United States Maritime Commission, which you brought under the heading, "Himala International, complainant against American Export Lines, Inc., et al.," respondents, in Docket No. 681, presided over by F. G. Horan, Examiner, you did not give the following testimony among other testimony that you then gave. I will read this to you:

Mr. O'Connor: Don't answer until we have a chance [fol. 1726] to object.

Mr. Hupper: Do you want to be heard——

Examiner Robinson: No, he said, "Don't answer" until he makes an objection.

By Mr. Hupper:

Q. The testimony begins with the last paragraph on page 108 of the transcript and ends in the second paragraph in page 109, and it is as follows:

(The testimony originally transcribed in this part has been agreed to be expunged from the record.)

Now, I ask you the question: Did you or did you not give that testimony?

Mr. O'Connor: Mr. Malatzky, you can refuse to answer that too if you wish to.

Mr. Galland: Now, just a minute, I don't understand that it is Mr. O'Connor's business or the business of any of us as counsel in this proceeding to direct a witness not his own witness, in the absence of a ruling by the Examiner, or in contravention from a ruling by the Examiner, [fol. 1727] not to answer a question that is put to him.

Mr. O'Connor: Mr. Malatzky is not a lawyer. He is here as a party to this proceeding through an order of the Maritime Commission which permitted him to intervene in this proceeding. He is called to the stand by the respondent without legal advice, and so forth, and placed in a position where it may be embarrassing to him, and it has no relation to the case, and I feel perfectly free—you were supposed to be here to protect the public interest, you have joined hands completely with the respondent carriers, so I voluntarily and gratuitously offer myself as a defender of the public interest.

Mr. Galland: All right, if you want to be a volunteer obstructor of the processes of this hearing, that is up to you, and you can take your chances on what good that will do you, but as counsel for the Maritime Commission I will see to it that if he refuses to answer at your direction that proper measures are taken to require him to answer, and you probably don't know what goes on, but they exist.

Mr. O'Connor: You have no right here as counsel for the Commission, of this Commission of five judges who are going to decide this case, and I would like to know where a judge ever asked a lawyer to sit in a case to advise him.

Examiner Robinson: Well, be that as it may, he is technically entirely right, and I brought the question up myself, [fol. 1728] that you have no standing to give this gentleman advice.

Mr. O'Connor: I am not giving him advice.

Examiner Robinson: I think you very definitely are.

The Witness: I will accept Mr. O'Connor's advice if he wishes to offer it. I will accept him as my counsel for that purpose.

Mr. Galland: I further move that if Mr. Malatzky is going to obstruct the processes of the hearing by refusal to answer questions, that his appearance in the case as an intervenor be stricken.

Mr. McDowell: I should think it might be deemed a peculiar responsibility of counsel for the Commission to undertake to advise a witness who is a party to the proceeding.

Examiner Robinson: All I need to say is this, gentlemen, if I had the authority, I would deny that motion, but inasmuch as I do not have the authority to remove him as an intervenor, I deny it on that ground.

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Mr. Galland: Well, I recognize you have no authority to make a ruling on it here. I am not undertaking to advise the witness one way or the other. I am suggesting that it is fairly improper conduct for counsel to induce a witness to defy the authority of the Hearing Examiner.

The Witness: The Hearing Examiner hasn't given any instructions.

Mr. McDowell: I don't think that is a proper——

[fol. 1729] Mr. O'Connor: I trust you are not trying to intimidate me for fear the Commission might do anything to me.

Mr. Galland: He is not your witness.

Mr. O'Connor: Well, he is not yours.

Mr. Galland: Well, he is not yours.

Mr. O'Connor: He is a party here who is being imposed upon.

Examiner Robinson: I don't think we need go any further. I have already made my ruling that technically you have no authority to do that, unless the gentleman wishes to make you his attorney——

Mr. Cockrum: He has.

The Witness: I have already made my consent on that.

Examiner Robinson: It is up to you. In the meantime, we will adjourn for lunch until two o'clock.

(At 12:30 p. m., a recess for lunch was taken to reconvene at two o'clock.)

[fol. 1730] AFTERNOON SESSION

2:00 P. M.

Examiner Robinson: Are we ready to proceed?

Mr. Hupper: Mr. Examiner, I have asked Mr. Isbrandtsen to take the stand for a very short period with respect to just one or two matters.

Before proceeding with him, I will present here translation of the four documents marked Exhibits 5-A, 5-B, 5-C, and 5-D for identification either on the first or the second day of the hearing, I don't recall, the original documents being in Dutch, being letters dated Rotterdam, 17th of January, 14th of March, 8th of May, and 18th of July, 1939, bearing the signature of Vinke & Co., which concern

at Rotterdam, it has been testified to, has been the agents of the Messrs. Isbrandtsen-Moller, the predecessor line to the complainant.

I have had translations made of those four documents, which I understand to be correct translations, and I would therefore like to have the four identified documents, with the translations thereof, now marked in evidence.

Examiner Robinson: Is there any objection?

Mr. O'Connor: You are putting the original——

Mr. Hupper: They are the ones that are photostated.

Examiner Robinson: Are there any objections?

Mr. Cockrum: The translations and the photostats are [fol. 1731] all being numbered Exhibit 5-A through -D?

Examiner Robinson: I don't know just at the moment.

Mr. O'Connor: Of course, we will argue the objection that they are not material or relevant by reason of their dates, back in 1939. They have no relevancy to the current issue which arose in 1948, the issue of the imposition of this contract system in this trade.

Mr. McDowell: I offer the further objection on the ground that the rate practices of the complainant are not involved in this proceeding.

Examiner Robinson: Are there any further objections? They will be received as Exhibits 5-A, -B, -C, and -D, unless somebody can show me why—I don't think it is necessary to give the translations any additional identification because the dates correspond with the letters. Is that perfectly satisfactory?

Mr. McGovern: Yes. I think the translations per se should not be admissible for they are translations.

Examiner Robinson: We will have it that way.

(The letters previously marked for identification Exhibits 5-A through 5-D for identification, with the translations attached, were marked in evidence Exhibits 5-A through 5-D, in evidence.)

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[fol. 1732] HANS ISBRANDTSEN was recalled, having been previously sworn, testified as follows:

Direct examination.

By Mr. Hupper:

Q. Mr. Isbrandtsen, have you seen the document which was placed in evidence yesterday as Exhibit 12-C, do you recall? I will show it to you (handing document to witness).

A. I see them now.

Q. This is the first time you have seen that document, is it?

A. I believe so.

Q. Will you kindly hand it to me just a moment?

A. (The witness complies).

Q. I will ask you to look at the second sheet of that document, which bears the heading "Isbrandtsen-Moller Co., Inc." and the notation further down, "Contract Form," and I will ask you to look at that.

A. Yes, sir.

Q. Do you recognize that as the contract form that was published in your tariff as filed with the Maritime Commission back in 1938 or 1939?

Mr. McDowell: I object, Mr. Examiner. We now appear to be going back into this matter of rate practices of the Isbrandtsen-Moller Co., a predecessor of the present [fol. 1733] complainant. These documents go back to a period before the war. The matter is remote, and in the first place, it is not relevant to the issues involved in this proceeding.

And, aside from that, in view of the fact it has been previously gone into to some extent, it is purely repetitive.

Examiner Robinson: They are already in evidence.

Mr. McDowell: I say though that we now appear to be headed into a complete reworking of the ground that has already been gone over quite fully here, and I object to it.

Examiner Robinson: This gentleman hasn't been asked these questions. I don't think he was asked these questions.

Mr. O'Connor: It is admitted that these papers, Ex-

hibit 12-C, come from the files, are correct copies of the files of the Maritime Commission. That has been admitted. Now, he is being asked again the same question, to identify them, and they have been identified and marked in evidence.

Examiner Robinson: Do we all admit that they came from——

The Witness: I don't believe I will admit that. There is no date on the paper, for one thing, and it is a question whether I would have seen it personally or not. Mr. Crinkley signed this supposed letter.

[fol. 1734] Examiner Robinson: No, this is just a form which is on file. This is not an executed contract.

The Witness: I understand. But the form there, if it has the rest on it, it would also carry a date, wouldn't it? What was the date?

By Mr. Hupper:

Q. I say to you that I understand that this second sheet of this Exhibit 12-C was copied from the tariff of the Isbrandtsen-Moller Co. as filed with the Maritime Commission back in 1938 and 1939.

A. You understand that—you are stating it.

Q. You recognize it as such?

A. No, I don't recognize it as such.

Q. You don't recognize it at all?

A. No.

Q. Do you know whether or not it was included in your tariff?

A. I do not know.

Q. Do you recall whether or not you personally had anything to do with the promulgation of the contract form for the Isbrandtsen-Moller Co.?

A. There was some discussion in the middle '30s, or the late '30s, about it, but just what those discussions were, I would have to refresh my recollection on them.

Q. You don't deny, do you, that that is the form that was [fol. 1735] published in the Isbrandtsen-Moller tariff?

A. I don't deny or affirm.

Q. Do you recall whether or not you dealt with counsel

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back there in the late '30s as to the preparation of a contract form to be included in your tariff?

A. I don't recall that.

Q. You don't recall whether you conferred with somebody in the Englar firm about it?

A. I don't recall.

Q. You have no recollection at all?

A. I have no recollection. But I ask again, what was the date of that paper?

Q. There is no date on this paper.

A. Isn't that out of order, to present to me a paper for identification that has no date on it?

Examiner Robinson: You have to construe it with the first page which shows, "List of Isbrandtsen-Moller Co. Inc. contract rates for period January 2, 1937 to August 31, 1939, to Antwerp-Rotterdam-Amsterdam."

As I say, that is not a particular contract, but the form on file during this period.

The Witness: I still don't think I should be presented with a paper for identification that has no date on it.

By Mr. Hupper:

[fol. 1736] Q. There was no date in your tariff. This was taken from what had been your tariff on file with the Maritime Commission.

A. If you understand it, you understand it; I don't understand it.

Q. If you say you have no recollection, that is a complete answer. I am not badgering you. I don't want you to say something you don't understand or don't recollect.

A. I have already told you that Mr. Crinkley, our Vice-President, has to do with these matters mostly, that I naturally am kept generally informed about just what occurred in the middle '30s, or thereabouts. You can hardly expect me to come here and testify right off the curbstone.

Q. I just wondered whether you recalled this was your form. That is all I am asking. You don't recall anything about it?

A. I have a very hazy recollection of the whole matter.

Q. Tell us what is that hazy recollection, the best you can describe it.

A. I can't really describe it. My recollection is so hazy I wouldn't even attempt to put it on the record.

Q. You do have a recollection, generally speaking, hazy though it is, that for that period, January 2, 1937 to August 31, 1939, you did propose to shippers by means of your tariff which was on file with the Maritime Commission, to [fol. 1737] give them contract rates?

Mr. Cockrum: I would like to interpose an objection at this point. The witness has already testified that his memory with respect to the line of questioning pursued by counsel is hazy; that he does not feel that he can place it upon the record.

Mr. Hupper: He hasn't said that at all.

Examiner Robinson: I think that was based mostly on whether or not the contract was there. But this question is different. He may or may not know the answer.

A. I already testified we had a contract in the '30s, but the character of the contract—the character of it is too hazy for me to be on the stand under oath to testify to.

By Mr. Hupper:

Q. That is the best answer you think you can give to that question?

A. The best answer I can make. Possibly Mr. Crinkley will be very much more definite.

Q. You say that Mr. Crinkley rather than yourself had this matter constantly in charge?

A. That is right.

Mr. O'Connor: Mr. Crinkley already testified to it in the record completely.

Mr. Hupper: He hasn't testified about this one.

[fol. 1738] Mr. O'Connor: Yes, while——

Mr. Hupper: This didn't develop until——

Trial Examiner Robinson: Mr. Andrews was on the stand when it was put in.

Mr. O'Connor: I am talking about the contract form that has gone in.

Mr. McDowell: We covered the point pretty thoroughly.

Mr. Hupper: I am going to cover it just a bit more

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thoroughly, bring it right up to date completely. He says the contract rate system is N. G., and it is my function to show that it isn't considered N. G. by the very people he says considered it N. G.

Mr. McDowell: I ask that those remarks be expunged. There is no basis for that.

Examiner Robinson: Wait a minute now. Let's don't go into any remarks. I mean, there is nothing to be angry at at all. So let's go ahead.

Mr. Hupper: Nobody is angry, least of all Mr. McDowell and myself. We are pals.

By Mr. Hupper:

Q. Mr. Isbrandtsen, will you kindly look at this document, which is marked Exhibit 9, produced by your counsel, Mr. O'Connor, and tell me whether you ever saw that before?

A. Didn't you show me this the other day?

[fol. 1739] Q. I don't recall. That is what I was asking.

A. It seems to me I saw it right from you the other day.

Mr. O'Connor: Yes, that is right.

By Mr. Hupper:

Q. And I show you this other document marked Exhibit 11, and ask you the same question; have you seen that before?

A. I think you showed me that, too, the other day.

Q. You recall those two documents, then?

A. Yes.

Q. Thank you very much. I am very much obliged.

Examiner Robinson: Are there any questions?

Mr. McDowell: I would like to ask a few questions.

Cross-examination.

By Mr. McDowell:

Q. Mr. Isbrandtsen, during this proceeding there has been considerable description of the Conference system, the Conference contract rate system, as an umbrella.

Do you agree it is an umbrella?

A. Not an umbrella to us.

Q. To whom is it an umbrella, if it is?

A. Well, I have publicly said that I believe it is an umbrella to foreign ship lines.

Q. Why do you say that?

A. I believe it enables the foreign ship lines to come to [fol. 1740] the United States and operate under our protected rates, a condition that those lines would find in no other place in the world.

Q. Would you say that American liner costs are more than foreign liner costs of operations?

A. Oh, yes.

Q. Substantially?

A. Very much. Very much so.

Q. Now, when the American and foreign lines participate jointly in the trade under a Conference agreement, is it your understanding that the rates, as a general matter, are fixed on a level satisfactory to the American lines?

A. That is my understanding.

Q. And would it be your understanding that a rate level satisfactory to the American lines, with their higher costs of operation, would be even more satisfactory to the foreign lines with their lower costs of operation?

A. Oh, yes, that follows.

Q. Would you say that to that extent foreign lines participating in that trade enjoy a subsidy?

A. Yes, I would say so positively.

Q. What do you mean by that subsidy?

A. I mean that if you have our Government to endorse the rate schedule, and go further and practically stop an American citizen from operating American ships, if that [fol. 1741] American chooses to be independent.

Q. Well, let's try to get this thing in concrete terms, Mr. Isbrandtsen. Let us assume, now, that in a given trade in which American and foreign lines operate jointly under a Conference agreement, a rate of $6 per ton on a particular cargo would be profitable to the foreign lines whereas it might take a rate of $10 per ton to be profitable to the American lines in that trade, do you think that might be a fair assumption?

A. Well, I don't know it exactly—I couldn't say exactly

the rate difference, but I can really state it in a different manner.

An American ship that would cost $1300 a day to operate would likely cost the foreign line $800 under present circumstances.

Q. Well, I don't think that would be far from the correlation which I have tried to express in terms of a rate of $6 per ton as against a rate of $10 per ton.

A. Well, you can't just generalize per ton, because it would vary with the tonnage, whether it was light cargo, heavy cargo, or the character of the cargo.

But I would say you wouldn't be very far off.

Q. Then the difference between the $6 per ton rate on which the foreign lines could operate at a profit, and the $10 per ton rate which the American lines would have to have, [fol. 1742] would represent, in your opinion, assuming that to be a satisfactory assumption as to the rates, an advantage enjoyed by the foreign lines in that trade?

A. Yes, sir. May I put it a little different?

If the American ship cost $1300 a day, and the foreign ship cost $800 a day, the foreign ship will make $500 before the American ship begins to make anything.

Examiner Robinson: All other factors being equal.

The Witness: Well, whether they are operating in the Conference.

Examiner Robinson: I say, all other factors——

The Witness: If the Conference is being run honestly, I would say that would be generally true.

By Mr. McDowell:

Q. So that, as cargo in that trade might fall off, the foreign lines engaged in the trade could continue to operate profitably in the trade on a lower loading factor after the cargo available for the American vessel would be unprofitable, would that be correct?

A. Under conditions. There is exceptions. If an American ship is subsidized, then the Government guarantees 10 per cent on investment.

[fol. 1743] Q. Leaving subsidies aside, and assuming the rate was maintained at a letter which would return a satisfactory profit to the American lines under heavy loading

conditions, as the tonnage falls off the foreign lines can stay in the trade longer than the American lines could, would that be correct?

A. Yes. Not only stay longer, but also may increase its service and push the American lines out.

Q. Has that happened in your experience?

A. I believe history shows that the American vessels have been pushed into the corner. That happened in the thirties, and I believe that process is going on now. I notice, if I may state——

Q. I wish you would continue.

A. I notice the list of new buildings in Europe at this time is rather high, actually motor ships are being built, many of which are for this trade, whereas we haven't got a single one building here.

Q. Is it your experience that foreign lines are putting additional ships in the American trade routes when American lines are not able to do so?

Examiner Robinson: Of course, you realize, and I want to call it to your attention, that he is not limiting his testimony to this particular trade. I want you to remember that.

[fol. 1744] The Witness: I also say, Mr. Examiner, this whole subject, while it is a continuous one, I was not exactly prepared to testify to it here, but I take it that Mr. McDowell is asking this as a matter of general information.

Mr. McDowell: I think all of us here are interested.

Examiner Robinson: Precisely. That is the point I have made all along.

Mr. McDowell: Interested in the protection of the American Merchant Marine, and there has been considerable testimony here, a large part over my objection, drawn from other trades with respect to the necessity of the exclusive patronage contract rate system to protect and foster the American Merchant Marine, and since we have here a witness who does not agree with the usual expression by those people permitted to testify over my objection, Mr. Examiner, I feel it is appropriate to go into it.

Examiner Robinson: I am not going to exclude it.

By Mr. McDowell:

Q. I believe the question, Mr. Isbrandtsen, was whether to your knowledge foreign lines had been able to put additional ships in the American trade routes when American lines were not able to do so?

A. I believe that is——

Mr. Hupper: There is no evidence to that effect.

A. (Continuing) I believe if you just read the news-
[fol. 1745] papers you can see that process going on daily.

By Mr. McDowell:

Q. That is going on today at this very time?

A. Yes, sir.

Q. And you think——

Mr. Hupper: This is newspaper evidence, is it?

The Witness: Oh, no. These are matters that I sit with almost daily.

By Mr. McDowell:

Q. Mr. Isbrandtsen, I suggest you allow Mr. Hupper's asides to go ignored until he has an opportunity to examine you.

A. All right, sir.

Q. You attribute that to the fact that rate levels maintained by the conference under the protection of the exclusive patronage rate system permit the foreign lines to operate comfortably with a lower loading than the American lines on a given trade, is that correct?

A. Well, they are attributed mostly to the exclusiveness of the contract, to the exclusive patronage contract.

Q. How is that, Mr. Isbrandtsen? Just go ahead and give us your ideas.

A. Well, if a number of lines can agree between themselves to a rate schedule on a satisfactory basis to the American lines, then it follows that the foreign line will have a decided advantage, and having that decided advantage, the foreign line may expand his service prac-
[fol. 1746] tically at will, since there is no restriction against him doing so, and in fact, he does so. It is profit-

able for him to do so, whereas it may not be possible for the American lines to do so.

Q. Even though both are charging the same rates under the conference contract system?

A. Yes, sir.

Q. Was it the American experience during the years prior to 1935 and '36 that American flag ships were decreasing in number in competition with foreign lines?

A. Very distinctly so.

Q. I didn't get the answer.

A. Very distinctly so.

Q. And that condition had continued from the time of the First World War?

A. Yes, sir.

Q. And all during that period the conference system was in operation on American trade routes?

A. Not all those years. I believe the contract system came about——

Q. I said the conference system.

A. The conference system?

Q. Yes.

A. The conference system existed even before the First World War.

[fol. 1747] Q. The contract rate system came into effect, I think there has been testimony here, along about 1925 or 1926. Is that your recollection?

A. '26 or '27, I believe.

Q. And did it serve to arrest the trend toward crowding the American flag ships off American trade routes?

A. Will you repeat that question?

Q. I understood that you were of the opinion, and it was your impression, that American flag ships in the years between the First World War in 1935 and '36 were decreasing in number on American trade routes as more foreign flag ships came into those routes, is that correct?

A. That is right.

Q. Now, during the latter part of that period, the exclusive——

A. The latter part of which period?

Q. The latter part of the period between the First World War and the years 1935 and '36.

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A. Yes.

Q. (Continuing) —the exclusive patronage contract system was put into effect very individually on American trade routes, is that correct?

A. That is right.

Q. Did the introduction of that system serve to prevent the situation which was then going on, of American flag ships being crowded off the American trade [fol. 1748] routes?

A. In my opinion, it was an important factor in decreasing the American participation.

Q. Do you think then that after the exclusive patronage contract system came into effect on the American trade routes, American flag ships were even more largely crowded off those routes?

A. I believe so, yes.

Q. Would you say that that was a factor, and was that one of the reasons for the adoption of the 1936 subsidy act?

A. I don't believe so—I don't believe the 1936 act took the conference affairs into consideration. I don't believe Congress really knew the subject fully.

Q. I am speaking now of the manner in which American flag ships were being crowded off the American trade routes. That is, the decrease in active tonnage of the American flag ships.

A. Yes.

Q. Or the fading away of the American Merchant Marine. Was that one of the reasons for the adoption of the 1936 subsidy act?

A. That is right.

Q. What was the purpose of that act?

A. The purpose for that act was to aid, give certain aids to the Merchant Marine, chiefly by means of subsidy, so that the Merchant Marine could be rehabilitated.

[fol. 1749] How did that subsidy operate?

A. Well, the subsidy——

Mr. Hupper: I think you ought to ask him if he knows by means of having one.

By Mr. McDowell:

Q. Is your line subsidized?

A. No.

Q. Has it ever been subsidized?

A. No.

Q. You have studied that question of subsidy, have you?

A. Yes.

Q. You have considered the question as to whether or not you also ought to apply for a subsidy?

A. Yes.

Q. How would the subsidy operate? Is there a flat payment given to the American line, or what are the terms and conditions of it?

A. Well, there is some considerable mystery just how it operates. I don't believe the accounting has ever been clearly explained.

Mr. Hupper: Mr. Examiner, I suggest this is very far afield, talking about subsidies he doesn't have any experience with.

Examiner Robinson: I have a hazy recollection that somewhere in the pleadings somebody alleges some applica- [fol. 1750] bility to the 1936 act. Am I correct?

Mr. O'Connor: Very definitely. We asked for relief in the amendment in the form of a subsidy.

The Witness: If I may answer in my own way——

Mr. Galland: I object to his answer as to what the provisions of the 1936 act are as to the payment of the subsidy.

Examiner Robinson: Obviously, if he doesn't have a contract, I don't think it would be terribly applicable.

Mr. O'Connor: It is generally known in the trade—the provisions how the subsidy operates.

Mr. Galland: It is generally set forth in the law, too.

The Witness: No, I don't believe it is generally set forth. I think there is considerable discussion how it is calculated, and how it is given.

Mr. O'Connor: It is done secretly?

The Witness: I wrote to the Commission not so long ago to find out how about a certain subsidy that had just been granted, just why it was given, and I was told that

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it had not been given, and therefore no information could be furnished me. At the same time, that company appeared publicly in the papers paying a dividend on the basis of a subsidy it had received. So that explains how bewildered we are at the time just how it operates.

[fol. 1751] Mr. Galland: I want to make an objection.

Mr. McDowell: I don't think it is appropriate to have an objection. There is no question. I want to bring the witness back to what I am trying to get at.

By Mr. McDowell:

Q. What I am trying to get at, Mr. Isbrandtsen, is this, that under the subsidy act the differential allowance is made, or a payment of some sort is made to American carriers to make up for the difference in costs of the American Lines as distinguished from the foreign lines. Is that your understanding?

A. Not exactly. Can I give you my understanding of it?

Q. Yes.

Mr. Galland: I would like a ruling on my objection. I certainly insist that the Merchant Marine Act of 1936 is the best and the only dependable evidence as to what its provisions are, and all of us can find it out very, very simply. All we have to do is read a page of print instead of reading it in a typewritten transcript as set forth by Mr. Isbrandtsen.

Mr. O'Connor: I submit, Mr. Examiner, the witness was called by the respondents, and has been showing what the 1916——

Examiner Robinson: I think you are all tarred with the same breath, as far as that is concerned.

[fol. 1752] Mr. O'Connor: The Alexander Committee report——

Examiner Robinson: Let's proceed.

The Witness: May I answer?

By Mr. McDowell:

Q. Yes, if you know.

A. The principal difference in costs arises from the wages of the crew, and the conditions under which the

crews are working in the respective ships. It was my understanding at the time that the subsidy would be given to compensate for the difference in that crew, but in talking to a fellow shipowner lately, he told me, "Oh, no. There are many, many other items that you wouldn't understand at all that have come into that." And I had to agree with him, that I did not understand that at all. But that was my understanding, that it would only apply to the actual cost differences between American ships and foreign ships, and I don't believe it is being calculated that way. [fol. 1753] It is my understanding that if the subsidy was given under the 1936 Act, that that would leave the American ship and the foreign ship at par with one another, and that then our competitive ability would be equal.

Also, I understand that that is not the case as the subsidy is being given.

However, I am not a subsidy taker, and I have not been able to get the information I require from the Commission, so I don't think my testimony here would serve a good deal of purpose.

Examiner Robinson: I was sure we would get that answer eventually.

By Mr. McDowell:

Q. What I am coming to is this point: We have had considerable testimony here on this whole question of the American Merchant Marine, and stabilization, and the regularization of the service, and there have been opinions expressed, or fears expressed by some witnesses, that absent the exclusive patronage rate system, rate wars would inevitably result, and the American ship operators would be driven from the sea. And I wanted to ask whether or not, in your opinion, the provisions of the subsidy under the 1936 Act would not tend to take care of that situation in the different costs in such fashion that it would be impossible for American lines to be driven from the seas by [1754] foreign competition? Is that your understanding?

A. The subsidy should put the American ships on an equal basis. Let me say, however, when you talk about the American Merchant Marine, just what do you mean by the American Merchant Marine?

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Q. That is a good question. What do you mean by it?

A. Well, the American Merchant Marine, as we know it, consists of a large number of tankers—I judge the tanker fleet to be about half of the Merchant Marine, so they don't come into this discussion.

Q. That is, they are not involved?

A. The tankers have no exclusive patronage contracts, and are largely owned by oil companies, well-to-do oil companies, or private operators. So that leaves, let us say there are six million tons of tankers, and about six million tons of cargo ships. Of those six million tons of cargo ships, they again would include a number of passenger ships, which I regard more or less as hotel business, not assigned to carry freight only. So those ships would be outside of this discussion.

Then, out of the remainder, there are a certain quantity of coastwise ships that come under the Interstate Commerce rules. I don't know the exact tonnage, but it is substantial.

So, I don't know exactly what would be left that we [fol. 1755] are talking about that are affected by this exclusive patronage contract, but when we do talk about it, I suggest that you gentlemen avoid talking about that part of it as the American Merchant Marine in its entirety.

Q. Let me see if I understand you correctly, then. You say there are now approximately 12,000,000 tons of American flag ships?

A. Yes.

Q. And of that, approximately six million tons are in tankers which are not involved in the contract system at all?

A. Yes, that is right. Of course, my figures are very rough.

Q. Let's take those approximations and perhaps we can get some direct figures later.

Now, you say of the six million odd tons left, we have to subtract the intercoastal vessels, plus the passenger liner service which is not involved in the Freight Conference?

A. Well, they are involved in it, but their method of doing business is naturally different than that of a pure freight carrier.

Q. Do they participate in these Conferences at all?

A. Oh, yes. Yes, indeed.

Q. But their principal interest is in the carriage of the passengers?

A. They must be, because they are designed to do that. [fol. 1756] Q. Now, from whatever we have left of that six million odd tons, we have also to subtract Lake cargo vessels, or do we?

A. No. The Lake tonnage—some part of the Lake tonnage is included. I don't know which part.

Q. I gather what you mean to comment, then, is that when we talk about the American Merchant Marine in so far as it is involved in this Conference matter, we are talking about considerably less than half of the American flag tonnage, perhaps as little as a third, would you say?

A. I would say nearly a fourth.

Q. About a fourth?

A. Yes, sir.

Mr. Hupper: By that do you mean about three million tons?

The Witness: Yes, sir, roughly. My figures are very rough. One oil company today has, I understand, about some 70 tankers idle today, and they don't come in here and raise distress calls. Yet they are certainly substantially a part of the American Merchant Marine.

Examiner Robinson: Is there anything further, Mr. McDowell?

Mr. McDowell: I would like to stop for now. I may want to ask one or more questions later.

The Witness: Pardon me. There was one question you [fol. 1757] asked I didn't quite finish my answer to. I was interrupted. Could I finish that?

By Mr. McDowell:

Q. I wish you would.

A. I don't know which it was, but it was on my mind. I have given this testimony I just gave unprepared, and as my own view, naturally. But just to see for a moment how the contract—how the Conference system as it works here is regarded by a foreign owner, I can quote some of

the briefs that were filed in a recent dispute before your Commission—I believe between Ellerman and the Kerr Line.

There was some question about the Kerr Line being an owner, therefore entitled to membership in the Conference to which Ellerman belonged.

Examiner Robinson: That is Docket 635.

The Witness: I believe in this brief that I read, that I particularly read, the Kerr Line stated that it should be in mind, or words to that effect, that this Conference system as it was was a valuable asset—a valuable asset to the foreign lines.

Now, then, I would like to ask, if I may—it may be a valuable asset for Ellerman and Kerr, but it shouldn't be to the extent, for those companies come in here, make exclusive contracts to prevent an American citizen from operating in his own country, and that is the chief objec- [fol. 1758] tion we have to the whole business.

I say again, if I may, that we can have no objections to a legal Conference that is run honestly. It has advantages and disadvantages, and our own position can be considered and reconsidered in connection therewith.

But I will say that we are dissatisfied with the system whereby we should not have access to trade in my own country. I object to it.

Examiner Robinson: Have you thought of your question, Mr. McDowell?

Mr. McDowell: Yes. I was interested there earlier on this line, Mr. Examiner.

By Mr. McDowell:

Q. Coming to what you just said first, for a moment, you would agree that the membership is a valuable asset to the foreign line, and as I understand your earlier testimony, you would say that is because of the fact that the foreign line under this system gets the assurance of a rate umbrella held up by the American lines whose costs are higher than those on the foreign line. Is that your view?

A. Oh, yes. The foreign lines are very gracious. I

know of cases where the foreign lines have conceded to the American lines to make the rates. It is very gracious.

Q. Any rate made by the American lines would be that much more satisfactory to a lower cost foreign line, wouldn't it?

[fol. 1759] A. Certainly.

Q. We had some testimony here about the necessity of the exclusive patronage contract rate system to maintain stability of rates.

In your judgment, Mr. Isbrandtsen, does the Conference contract rate system operate as an inducement, and in some cases economic compulsion upon the shippers to agree, notwithstanding what otherwise would be their preference, to confine their shipments exclusively to the Conference Lines?

Mr. Hupper: Just a moment. I want to make an objection to this whole subject matter. We have gone over it to the third day Mr. Isbrandtsen was on the stand. If you want to emphasize it——

Mr. McDowell: Well, I never questioned Mr. Isbrandtsen before.

Mr. Hupper: You had the opportunity.

Examiner Robinson: Go ahead. We can't stand on procedural technicalities.

A. My own experience is that the shippers generally would be happy if it didn't exist.

By Mr. McDowell:

Q. To the extent——

A. (interrupting) May I add here, our company itself is a shipper of certain commodities, and we would be happy if it didn't exist.

[fol. 1760] Q. As a shipping of certain commodities, has your company been compelled against your wishes to agree to ship exclusively by Conference Lines in certain trades?

Mr. Hupper: I object to the form of the question—"compelled against your wishes."

The Witness: We have evidence to that effect.

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By Mr. McDowell:

Q. What evidence?

A. We have signed these provisions under protest.

Q. And that is because of the fact that unless you signed these agreements you would be compelled to pay a higher rate for the same service?

A. Yes, sir. As a matter of fact, if I use my own American boat I will have to pay a higher rate to a foreign line if I don't use that group of lines exclusively. It is the most absurd condition I ever heard of.

Examiner Robinson: You mean if you, as a merchant, as distinguished from a shipper?

The Witness: Yes. But our company is both a shipper and a ship owner.

By Mr. McDowell:

Q. How does that arise? Does that arise from the fact you, as a merchant, require service in certain trades where you as a shipper do not furnish service, or do not furnish sufficient service to take care of your needs as a shipper?

[fol. 1761] A. We have trade in directions where we do not go ourselves. But it would apply equally as well where we are going ourselves. Naturally, we would want to use our own ship in preference to an outside ship.

Q. And in those situations you can't use your own ships without having to pay a higher rate on any traffic which you might at another time have to send by the Conference Lines, is that correct?

A. We use our own ship and ask for the Conference to sue us, if they wish, and see how far they will get with it.

Q. You have signed the Conference agreement in some trades, however, under protest, have you?

A. Under protest, yes.

Q. Now, looking at your operations as a ship operator, Mr. Isbrandtsen, to the extent that the shippers in the particular trade are obligated by contract, or by this exclusive patronage freight agreement to ship all their cargo by the Conference lines, you, as an independent line in that trade, are denied the opportunity to carry the cargo of those shippers; is that right?

A. That is correct.

[fol. 1762] Q. Or participate in the carriage of that cargo?

A. That is right.

Q. And to that extent, do you feel induced and compelled to offer rate reductions to shippers in order to get some business away from the conference lines?

A. Not necessarily. Not necessarily so. In some cases there have been shippers that were so indignant against the system that we have even known them to pay us a little more when the rate was low than the conference received.

Q. Do I understand then that in some cases you do, however, make rate reductions as an inducement to get traffic from shippers?

A. I wouldn't say great reductions. We generally meet the conditions as we find it, and do the best we can.

Examiner Robinson: Did you understand rate reductions, or great reductions?

Mr. McDowell: Rate reductions. I didn't say "great."

A. We are not making rate reductions as a general practice.

By Mr. McDowell:

Q. That is, at the present time?

A. Sir?

Q. At the present time?

A. Well, it is not our policy to be a bargain basement. Our service flies the American flag, and we believe we are tops when it comes to transportation, and we con-[fol. 1763] sider our service as good as any individual ships that belong to the conference, and we argue that point as much as we can.

Q. Well, as an independent line, you are free to adjust your rates as required between yourself and the shipper, and mutually satisfactory to you and the shipper?

A. Oh, yes. We trade all ways.

Q. And that means that you are free to compete in rates if you should choose to do so with the conference lines, does it not?

A. We are entirely free.

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Q. You know of nothing in the Shipping Act which limits your freedom to so compete?

A. I would consider—if we operated at a loss, I would consider that we might be subject to criticism.

Q. Other than that, so long as you do not discriminate——

A. As a good merchant we try to buy at a little less than we sell at.

Mr. McDowell: That is all.

Examiner Robinson: Are there any further questions?

Redirect examination.

By Mr. Hupper:

Q. Mr. Isbrandtsen, Mr. McDowell has gone back into the twenties with you, up to date, so I will have to ask you a few questions. Relating to the matter of rates, lower than those of the conference members, are you aware [fol. 1764] that your company presently has lower rates than the conference lines on 581 commodities, according to the tariff of your company on file with the Maritime Commission?

A. Well, I have seen that here. I didn't know the figure before I came in here.

Q. You don't deny that that is so, do you?

A. Well, I have heard it testified to here. It is not for me to deny or affirm it.

Q. As I understand it, the Isbrandtsen-Moller Company came into the trade in 1931, and ran until 1939, is that correct?

A. I believe a little earlier than that. 1928 maybe.

Q. And the ships operated by that company throughout that period were all foreign flag ships, weren't they?

A. An occasional American flag ship, I believe.

Q. But you chiefly operated what they call the Maersk ships, and some of the Moller?

A. Oh, no.

Q. No Moller?

A. No, Moller did not have as many ships then as he has now.

Q. How about the Maersk ships?

A. The Maersk ships were not so many then.

Q. How many Maersk ships did you operate?

A. Roughly, I can tell you when the war ended we had some 84 ships in our possible list altogether.

[fol. 1765] Q. Which war are you talking about?

A. When the last war commenced.

Q. I am talking about the period 1928 to 1939.

A. Well, let me say—you are asking how many Maersk ships we operated?

Q. How many foreign flag ships you operated. Put it that way. In the trade out of the North Atlantic.

A. I can't remember here, but we mostly operated with chartered ships.

[fol. 1766] Q. And they were foreign flag ships?

A. Mostly foreign chartered ships, yes.

Q. And in the operation of those ships, did you succeed in putting any American ships or ship owners in the corner?

A. Did I succeed?

Q. Yes.

A. Are you assuming I tried?

Q. I am only referring to your testimony in answer to Mr. McDowell, where you said in the period of the '30s, and perhaps beginning a little before, you considered various American flag ships had been driven into the corner.

A. That is right.

Q. You were operating foreign ships exclusively at that time, and what I want to know is whether your operations put any American flag shipments in the corner?

A. It wasn't our business to put anybody in the corner. We minded our own business, and we didn't go into cohoots with anybody to put anybody in the corner.

Q. Do you know whether you did put any American flag operators in the corner?

A. Not intentionally, any American owner.

Q. Do you know any American flag operation, including your own, that had the result of putting any American flag operation in the corner?

A. The operations were going steady downward.

[fol. 1767] Q. What American operation did you put in the corner?

A. Are you speaking about the Trans-Atlantic trade?

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Q. Yes, the period '28 to '39?

A. I don't think there was any American service there except the United States Lines.

Q. You didn't put them out of business, did you?

A. It seems not.

Q. What American flag operation was driven out of business during that period by you or anybody else?

Mr. McDowell: Mr. Examiner, I think there is an assumption in the question here that the witness testified he had driven people out of business.

Mr. Hupper: It came out in his testimony.

The Witness: I believe I can answer that, Mr. McDowell. I believe there might have been more American lines in the business if those conditions hadn't existed.

By Mr. Hupper:

Q. You mean if there hadn't been so many foreign ships, there would have been more American?

A. Yes.

Q. Your operation was chiefly foreign?

A. That is right.

Q. And that operation of yours had the benefit of the lower foreign cost, did it not?

A. That is right. But not the benefit of the protected [fol. 1768] rates.

Q. Well, you have said that the foreign ship can today break even, as I recall your testimony, about $800—I mean that is the operating cost of the foreign ship, and the American, you say, is about $1300.

A. That is right.

Q. Is it your idea that the foreign ships ought to withdraw from American trade?

A. Not necessarily.

Q. American ships have to go to foreign ports, don't they?

A. That is right.

Q. Foreign ships are entitled to enter American ports just as American ships are entitled to enter foreign ports?

A. Free access.

Q. Isn't the freight understood to be generally paid by the consignee rather than the shipper?

A. It all depends on how the goods are sold.

Q. Isn't that the general assumption? Isn't the freight——

A. (interrupting) No. My firm sells c.i.f. as well as f.o.b.

Q. When you sell c.i.f., it is not your purpose that any part of the cost remain in your hands? The recipient of the goods pays the cost?

A. Pays the cost.

Q. That includes the freight?

[fol. 1769] A. That is right.

Q. All right. You don't favor foreign flag lines withdrawing from our trades. Do you favor the foreign flag lines themselves constituting a Conference and operating separately from the American flag lines?

A. It is not for me to say whether I favor it or not.

Q. But I would like to get your opinion.

A. I am not prepared to give my opinion on that.

Q. Well, you were answering Mr. McDowell very freely. Why can't you answer me? Do you, or do you not?

A. I think your opinion on that would be better than mine.

Q. But I am not on the witness stand yet, although somebody may want me to.

A. I give my opinion as follows: I believe foreign lines, so long as they can hold on to this exclusive contract system we have here, they would be fools to make their own Conference.

Q. All right. Why should they have any contract rate system at all if they can operate so much more cheaply? Why shouldn't they charge lower rates?

A. Because they want to stop people like myself to come in.

Q. Are you serious about that?

A. Certainly.

Q. That foreign——

A. If I understood your question right.

[fol. 1770] Mr. Hupper: Kindly read the question.

(The question was read by the reporter.)

A. I answered the question, to prevent people like myself coming in.

Q. You think that is their purpose?

A. Certainly.

Q. The purpose of the foreign line?

A. Do you know any other purpose?

[fol. 1771] Q. Who told you that?

A. I know that over years experience.

Q. They have never driven you out?

A. You don't mean it is on account of stability.

Q. I am not saying anything.

A. They haven't a darned bit of interest in stability.

Q. You answered Mr. McDowell very freely, and I think it is only fair, Mr. Isbrandtsen, that you should answer me freely.

Mr. McDowell: I think he is answering, very, very freely.

The Witness: The man who lives here might have an interest in how commerce goes, but the man in Denmark, his interest is abstract. So far as goods is concerned, it gives him an income.

By Mr. Hupper:

Q. I want to know whether you seriously believe the purpose of the foreign lines is to drive your company, an American ship operator, out of business?

A. To drive any independent out of business. That is the purpose of the contract system, and there is no other purpose for it.

Q. That is your earnest belief?

A. Absolutely.

Q. Has anybody ever told you that?

[fol. 1772] A. I told you that a number of times.

Q. Has anybody told you that?

A. It is no use to tell me that.

Q. They haven't told you?

A. Nobody needs to tell me that.

Q. You assume it?

A. I don't assume it. I know it.

Q. But if they did have that purpose, why shouldn't they band together in a conference, or even separately, and compete with you very actively?

A. They might very well, and they may some day do it.

Q. They haven't yet?

A. It isn't necessary. I told you before they would be fools. What is sweeter than to come in to the American market with rates set by the conference lines. That ceiling enables them to put boat after boat in a protected market.

Q. You don't object to American lines having a rate that will enable them to stay in business?

A. How was that again?

(The reporter read the question.)

A. Not a bit.

By Mr. Hupper:

Q. You think that is consistent, don't you, with the shipping policy of the United States, that they should make enough to live?

[fol. 1773] A. Well, there are many ways of living.

Q. Can't you answer that question as put? It is a very general one.

A. What does that mean—make a living. You may live one way. I may live another. We both live.

Q. You say there is an expense of operating a ship of about $1300 a day?

A. Well, it is my effort to reduce my running costs to the least possible. If I received a subsidy that would not be my purpose. So we both live. One has one object and another man has another object.

Q. You are not attacking the subsidy system of the United States?

A. I didn't say so.

Q. Well, you are not?

A. I didn't say so.

Q. You considered once applying for one, didn't you?

A. What is that?

Q. Didn't you consider applying for a subsidy once?

A. When?

Q. You said something a few minutes ago about making inquiries, that you were considering the subsidy matter.

A. Oh, yes.

Q. Was that just idle curiosity?

A. No, not idle. It was curiosity.

[fol. 1774] Q. Genuine curiosity instead of idle?

A. I just thought there was something rotten in Denmark.

Q. That is where you hail from, isn't it?

A. I know darn well it is.

Examiner Robinson: Let's have a short recess.

Mr. Hupper: I have only a couple of questions.

Examiner Robinson: Very well.

By Mr. Hupper:

Q. You agree with me, I suppose, Mr. Isbrandtsen, that in view of the existence of the subsidy system for American shipowners, if a subsidized American shipowner does suffer losses, operating losses, by virtue of increased competition of foreign flag ships by means of lower rates, the result is that a larger subsidy payment has to be made to the American shipowner out of the Treasury of the United States? You agree to that, don't you?

A. That is their accounting.

Q. Will you kindly listen to the question? I asked if you agree with something.

Mr. Galland: I would like to hear the question.

Examiner Robinson: Read the question.

(The reporter read the question.)

Mr. Galland: I object to it on the ground that is not my understanding of the way it works.

Examiner Robinson: You can ask him.

[fol. 1775] The Witness: That is not my understanding. That is not my understanding, but it may very well be so.

By Mr. Hupper:

Q. Well, it may be?

A. It is not my understanding that that is the accounting. I thought that if I paid a seaman double the wages that a foreigner pays his seaman, that I would be refunded that difference, but not necessarily the difference in the freights they are receiving.

Q. You said in answer to Mr. McDowell that the situation wasn't exactly the way you understood, that some fellow shipowner indicated there was much more to it than appeared on the surface. Is that your thought?

A. That is just what I said.

Q. It is the general purpose of the subsidy act, according to your understanding, isn't it, to put the American and foreign shipowner on the same substantial business of ship-operating costs?

A. That is right.

Q. I take it you will agree that every common carrier operating a berth service, if he is going to live, must make a rate which will induce the movement of cargo; is that a fair proposition?

A. Well, not only that, but he must be sure there is enough cargo for him to sail.

[fol. 1776] Q. That is one thing he can't be absolutely sure of.

A. If he is in business he ought to be.

Q. It depends on business conditions?

A. He ought to know about them if he goes in.

[fol. 1777] Q. Well, he can't look through a very heavy crystal ball, can he?

A. He doesn't need a crystal ball. He needs certain knowledge of the business—still better if he has an apprenticeship in it.

Q. After all, business conditions change, and what you think conditions might be six months from now may turn out to be not quite so. That is correct, isn't it?

A. He certainly knows that beforehand too, that conditions change.

Q. But that doesn't give him cargo six months from now to lug on the ships.

A. He knows there are times in the year when there is plenty of cargo, and other times when there isn't.

Q. And he knows in some years he will turn out less cargo than in others?

A. Certainly.

Q. If he doesn't know, he finds out later from experience?

A. That is the business. If he chooses it for himself, he ought to know.

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Q. You are quite right; it is matter of choice. If he wishes to go in business, there are no objections.

A. If he wishes to sail a boat a week that is his choice. If he wishes to sail a boat a month, that is his choice.

Q. He has absolute freedom as to what he chooses to do? [fol. 1778] A. Yes.

Q. If that is the kind of business he wants to be in, God bless him—that is what you say?

A. That is right. There is no law that says he has to do it.

Mr. Hupper: That is all.

Mr. Galland: I would like to ask a question.

Recross examination

By Mr. Galland:

Q. Do I understand you, Mr. Isbrandtsen, to take the position that the contract rate system enables low cost foreign operators to fix rates at a level which is much more than sufficient to return their operating costs plus a reasonable profit?

A. It could if they so chose, yes.

Q. That, as I understand your testimony to Mr. Hupper, is what the system does, is that right?

A. Mr. Hupper didn't touch on that.

Q. Perhaps it was Mr. McDowell. Is that a correct summary of what you testified?

A. No, it isn't.

Q. Will you, for the benefit of the record, repeat what you said on that subject, because that is what I thought you said?

A. Then we will have to go back to my testimony.

[fol. 1779] Mr. McDowell: If I may be helpful, what I was trying to get out is a rate fixed at a level satisfactory to the high cost American line would be more satisfactory and profitable to the foreign line with lower costs.

The Witness: That is the question I answered.

By Mr. Galland:

Q. All right. And you say that that is, of course, a great benefit to the foreign flag line?

A. Certainly.

Q. And you feel that it flows from the operation of the contract rate system?

A. Certainly.

Q. Now, do you feel that in the absence of a contract rate system the rate level would be reduced?

A. It might be reduced, or it might be higher, according to the conditions, according to what the Conference would decide to do.

Q. Well, now, if you say that the contract rate system keeps the rates up to a higher level than the foreign flag operator needs, doesn't it follow, as a matter of necessary inference, that you think in the absence of a contract rate system the rate level would drop?

A. Not necessarily.

Q. Well, why not?

A. Well, the Conference—the only difference between a Conference with an exclusive system and a Conference [fol. 1780] without it is that without the system they would not be able to monopolize American markets.

Q. But I am talking about the situation in terms of the rate level concerning which you had some testimony to give in response to Mr. McDowell's question, and you say that it costs about $1300 a day to run an American flag ship and $800 a day to the foreign flag ship, and enter the contract rate system, and by virtue of the contract rate system the foreign flag operators can allow, and sometimes do allow, the United States flag operators to make the rate, and the United States flag operators make the rates so high that they enable the high cost, $1300-a-day people to get by and make a profit, and therefore enable the $800-a-day people to get by and make $500 a day more profit. Isn't that what you said?

A. No, it is not. I didn't refer to the level of rates. I testified that a rate satisfactory to the American flag ship would, in any event, give the foreigner a profit.

Q. You said that is a fine thing for the foreigner?

A. *I* fine thing, indeed.

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Q. The foreigners like it?

A. They like it.

Q. The contract rate system is what enables the foreigners to enjoy that result, isn't that right?

[fol. 1781] A. Partly.

Q. All right. Now, we will go back to where we were a moment ago. And I say, if the contract rate system does enable them to enjoy the result, doesn't it follow that without the contract rate system, they would not enjoy it?

A. That is not altogether clear to me. Is it clear to you? I say my proposition is very simple. Any rate that is satisfactory to the American ship owner is, of necessity, satisfactory to a foreign ship owner.

Q. Yes——

A. Provided the business is there, and the business is there if independents can be kept out. At least, that helps. And if the American market can be monopolized, that makes it that much sweeter for the foreign owner.

Q. Your grievance is that under the contract rate system, as an independent, you have trouble at whatever rate level in getting cargo that is tied up by the contract system, is that correct?

A. I haven't testified we have trouble.

Q. Well, isn't it a fair assumption that you anticipate trouble under the contract rate system since you have taken the trouble to have this operation enjoined?

A. We enjoined you, and we always anticipate what is going to happen.

Q. I assume you don't go shopping for injunctions just because you like to have injunctions. You get them be-

[fol. 1782] cause you think that without them you will be hurt. Isn't that correct?

A. I have heard time and again that the Conference system is an umbrella over our heads, and the contract system is an umbrella over us. Then why in the world should we go in and attack it if that is the fact?

Q. That is one of the things we would like you to explain.

A. Can you explain that?

Examiner Robinson: Are you going to be much longer? I think we will have a short recess anyway.

The Witness: All we ask is access.

Mr. Galland: I won't pursue it further. You don't have to come back.

Examiner Robinson: You are excused.

(Witness excused.)

Examiner Robinson: We will have a short recess.

(A short recess was taken.)

Examiner Robinson: Are we ready to proceed?

Mr. Hupper: Mr. Lee is here to finish his cross examination.

ROBERT C. LEE resumed the stand, having been previously sworn, and testified as follows:

Cross examination

[fol. 1783] By Mr. McDowell:

Q. Mr. Lee, what company are you connected with?

A. With the Moore-MacCormick Lines.

Q. That company is engaged in liner service in the trades covered by this proceeding?

A. Through Central Europe, yes.

Q. Through Central Europe?

A. Yes.

Q. You mean you participate in the North Atlantic trades?

A. That is right. Whatever moves through the Baltic. And before the war, we participated through Rotterdam and Antwerp.

A. I don't understand. The North Atlantic cover——

Examiner Robinson: He means he serves the Baltic ports, but the goods infiltrate—they don't stop at the port.

By Mr. McDowell:

Q. Are you a member of the North Atlantic Continental Freight Conference?

A. Not now.

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Q. You are an independent in this trade, then?

A. No, we are not an independent. When we operate a ship in the trade we assign it to our agents who are members of the Conference—the United States Lines.

Q. That is charter operation by the United States Lines? [fol. 1784] A. No. As far as I remember, it is all United States Army.

Q. Your line is not a member of this Conference?

A. That is correct.

Mr. McDowell: Mr. Examiner, I move to strike and exclude the entire testimony of this witness on the ground he is incompetent to testify with respect to the issues in this proceeding.

Examiner Robinson: Overruled.

Mr. McDowell: That is all.

Examiner Robinson: Are there any further questions?

Mr. O'Connor: I have just a few questions.

By Mr. O'Connor:

Q. I find from the records of the Maritime Commission that your company belongs to 17 Conferences, as I count them.

A. I would think that is probably correct.

Q. Now, I also understand that your two principal operations are one to the Scandinavian countries under the American Seantic Line—is that one of yours?

A. That is correct.

Q. And I understand that operation is under Conference Agreement 7670, the North Atlantic-Baltic Rate Conference.

A. That is correct.

Q. Now, as I count the membership of that Conference, there are 17 lines, five of which are American, including [fol. 1785] your company (handing pamphlet to witness).

A. Do you want me to confirm it?

Q. Yes. I may be wrong, but substantially I think I am right.

A. That is right.

Q. Now, your other principal operation is to South America—Brazil and so forth?

A. Yes.

Q. And that operation is under Conference Agreement 5450, I think, isn't it—Brazil-United States-Canada Freight Conference?

A. Well, I don't remember that.

Q. What is the conference?

A. We have a conference there, but it seems to me it is under the 7,000 number.

Q. The East Coast South American?

Examiner Robinson: Off the record.

(Discussion off the record.)

By Mr. O'Connor:

Q. The River Plate and Brazil Conferences. Now, will you tell me how many lines are in that Conference, and how many are American?

A. Seventeen, with five American.

Q. Your company is a subsidized company, is it not? [fol. 1786] A. Yes.

Q. And it is subsidized in both those trades?

A. Subsidized in both those trades.

Mr. O'Connor: That is all.

Examiner Robinson: Are there further questions?

Mr. Hupper: I will ask one in consideration of what Mr. O'Connor has brought out.

Redirect examination

By Mr. Hupper:

Q. In the North Atlantic-Baltic Conference that has just been referred to, Mr. Lee, your company is a member, as I understand.

A. That is correct, yes.

Q. And in that Conference is your company associated with the following named lines, which are also members of the North Atlantic Continental Freight Conference; that is to say the Black Diamond Lines, United States Lines, Waterman Steamship Corporation, being three other Amer-

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ican lines, also the Cunard White Star, Holland-American, and Ellerman's Wilson Line being foreign lines?

A. Yes.

Mr. Hupper: That is all.

Examiner Robinson: There being nothing further, you are excused.

(Witness excused.)

[fol. 1787] Mr. Hupper: Mr. McIntyre.

P. E. McIntyre was called as a witness, and having been first duly sworn, testified as follows:

Direct examination

By Mr. Hupper:

Q. Mr. McIntyre, will you kindly give your full name and address?

A. P. E. McIntyre, No. 1 Broadway, New York.

Q. What is your business?

A. Steamship.

Q. With what company?

A. United States Lines.

Q. How long have you been connected with them?

A. Eighteen years.

Q. And before you went with them, what was your business?

A. Steamship.

Q. Where?

A. Chicago, Baltimore, Norfolk.

Q. All told, how many years have you been connected with steamship operations?

A. Thirty-five.

Q. What are your functions with the United States Lines at present?

A. I am the General Freight Traffic Manager and Super-
[fol. 1788] visor of the Freight Traffic generally.

Q. How many years have you held that position?

A. Since 1937.

Q. Before that, were you in freight traffic there?

A. Yes. I represented the company in Chicago for a number of years.

Q. The United States Lines is a member, is it not, of this North Atlantic Continental Freight Conference?

A. Yes.

Q. Do you attend Conference meetings on behalf of the company?

A. All of them, yes, sir.

Q. You are the United States Lines regular representative at the Conference meetings, are you?

A. Yes.

Q. And also in the determination of questions that are put before the Conference?

A. Yes.

Q. You act for the United States Lines?

A. For the company.

Q. And you, yourself, make the decisions, do you not?

A. Yes.

Q. You say you attend all the meetings, is that correct?

A. Yes.

Q. I take it you are well acquainted with the representatives of all the other companies, members of the Confer- [fol. 1789] ence who attend those meetings?

A. Yes, very well.

Q. Will you tell us whether or not you have noted in those Conference meetings effort on the part of the representatives of the foreign line Conference members to dominate the American line members?

A. I have never seen any evidence of it.

Q. You feel quite sure about that, do you?

A. Positive.

Q. Do you, or do you not, find in those Conference meetings a spirit of cooperation between all the members, irrespective of the nationality of the lines they respectively represent?

A. I think it is very friendly and cooperative, considering all the diverse interests there.

Q. I suppose you have lively discussions once in a while, don't you?

A. Very.

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Q. You don't call those unhealthy at all, do you?

A. No. They don't do any harm. But everybody is looking after their own interests.

Q. But you generally come to a conclusion that is acceptable to all the members, do you? That is your experience?

A. Yes. Sometimes it is longer and more difficult in [fol. 1790] some instances than in others, but we finally get together.

Q. But you finally do manage to agree, is that right?

A. Yes.

Mr. Hupper: Your witness.

Mr. McGovern: No cross.

Mr. McDowell: No cross.

Mr. Cockrum: No questions.

(Witness excused.)

Mr. Hupper: Mr. Kenick.

C. W. Kenick called as a witness, having been first duly sworn, testified as follows:

Direct examination

By Mr. Hupper:

Q. Mr. Kenick, kindly give us your full name and address.

A. C. W. Kenick, 25 Broadway.

Q. What business are you in?

A. Shipping.

Q. With what company?

A. Cunard White Star Limited.

Q. That company is one of the members of the North Atlantic Continental Freight Conference?

A. It is.

Q. What are your functions with that company?

A. General Freight Traffic Manager in charge primarily [fol. 1791] now of freight traffic.

Q. How many years have you held that position?

A. Twenty-four.

Q. And before you held that position?

A. Assistant General Freight Manager.

Q. And before that?

A. I was in the Passenger Department. Before that I was with the Royal Mail, before the last war.

Q. How many years do you say, if you are willing to add them up, you have been in the shipping business?

A. Forty-three, of which 30 are in freight.

Q. Are you the representative of the Cunard Line in the Conference?

A. I am.

Q. Do you know Mr. McIntyre?

A. Reasonably well.

Q. How many years have you seen him there?

A. Oh, many, many years. I don't know—over 20 anyway.

Q. I take it you know the other gentlemen who represent their respective lines in the Conference?

A. I do.

Q. Tell me, has it been the purpose of the Cunard Line to drive the American lines in that Conference, so to speak?

A. No. Of course not.

Q. You feel pretty sure of that, do you?

[fol. 1792] A. Definitely.

Q. Have you personally tried to overreach the representatives of the American member lines in that Conference?

A. No, not on Conference matters.

Q. Is it a fair statement that all you gentlemen representing the several member Conference lines get along with reasonable peace?

A. I would say so.

Q. There is a lot of discussion once in a while, I suppose?

A. Naturally.

Q. Do you make out to come to some common conclusion after a while?

A. Generally speaking. There are always some ways and means of compromising.

Q. I understand the freight matters are submitted to a Rate Committee after study by Mr. Andrews—he is the Chairman of the Conference, is he not?

A. Right.

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Q. Are you on the Rate Committee?
A. Not now, no.
Q. You have been in the past?
A. Oh, yes.
Q. But as a representative member of the Conference, you make, with the others, decisions on what shall be done in respect of rates?
A. The final decision, yes.

[fol. 1793] By Mr. Hupper:

Q. Mr. Kenick, I will say to you that the record here on several occasions in the course of the hearings has made reference to a question as to whether the foreign lines in the conference exercise what is broadly described as a veto power against or versus the American line members. Will you tell us whether or not that has happened, namely, the exercise of a veto power as such?
A. No, it is not so.
Q. Have you ever observed any members of the conference irrespective of whether they were American lines or foreign lines being arbitrary versus each other, in an effort, as we might describe it, to veto the views of the other lines or the reaching of a decision in the course of discussion in negot-ation?
A. Not normally, except in a most extraordinary case involving some basic principle. That has happened once or twice and the conference has broken up. In the long run, though, it is a case of live and let live.
Q. In other words, for a great many years, you have managed to get along without any very inharmonious proceedings or actions, haven't you?
A. That is correct.
Q. And you are ready to state categorically that there is no effort to exercise veto power either by the foreign lines or by the American lines versus each other, is that [fol. 1794] correct?
A. That is definitely so.
Q. You do state that, do you?
A. I positively do.

Mr. Hupper: Your witness.

Cross-examination

By Mr. McGovern:

Q. Just one question, Mr. Kenick. Under the rules of procedure for your conference as a representative at the conferences of the Cunard Lines do you possess the power to veto any proposed rate adjustments? You do, do you not?

A. I do.

Mr. McGovern: That is all.
Mr. O'Connor: That is all.
Mr. McDowell: No questions.
Mr. Cockrum: No questions.
Examiner Robinson: The witness is excused.

(Witness excused.)

Mr. Hupper: I will call Mr. Crinkley.

MATTHEW S. CRINKLEY was recalled.

Direct examination

Mr. Hupper:

Q. Mr. Crinkley, do you hold in your hand a copy of the Exhibit 12-C?

[fol. 1795] A. I don't have the identification on it, Mr. Hupper——

Q. Yes. Will you turn to the second sheet there where you see a document which bears a heading Isbrandtsen-Moller Company, Inc.

Mr. McGovern: May I interrupt, to ask whether this is 12-A or 12-C?

Mr. Hupper: 12-C.

By Mr. Hupper:

Q. (Continuing.) And underneath the heading "contract form"——

A. Yes, I see it.

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Q. Do you recognize that as having been copied out of your tariff form on file with the Maritime Commission?

A. Yes.

Q. You were here when I asked Mr. Isbrandtsen a question about that, weren't you, this afternoon?

A. Yes.

Q. You recall that he didn't have any definite recollection about it?

A. That is right.

Q. And you heard him say that you were much more familiar with these matters than he was?

A. That is right.

Q. Did you prepare that form yourself, I am now referring to?

[fol. 1796] A. Yes.

Q. When did you prepare it, do you recall?

A. No, I don't recall exactly when—some time between 1937 and '39.

Q. Well, it was in your tariff form that was in effect from January 2, '37 to August 31, '39, wasn't it?

A. It was included in the tariffs filed during that period. I don't know just at what point or what date, or anything of that kind.

Q. You don't recall what year you prepared that?

A. No, I don't recall which year.

Q. You prepared it yourself?

A. Yes, I did.

Q. You had legal guidance, did you?

A. No.

Q. You didn't consult Mr. Englar, or anybody about it?

A. No.

Q. Did you base it on any other contract form that was available to you?

A. No, I think that shows for itself. It wasn't based on any other contract form available to us.

Q. You didn't examine any other contract form before you made it up?

A. No, sir.

Q. I take it that at various times all throughout the 30's [fol. 1797] you had seen other contract forms?

A. Yes, I saw them before then. I was formerly connected with an exporter and had experience on that.

Q. What company?

A. A. C. Monk & Company, Farmville, North Carolina.

Q. That is the company you referred to when you first took the stand?

A. Yes, that's right.

Q. And do you recall the earliest year that you saw that contract form of other carriers?

A. I can't recall, except to say it was somewhere around 1926.

Q. I take it you had been familiar with the general subject of contract rates throughout that period, from 1926 on, hadn't you?

A. Yes, sir.

Q. You had seen the conference forms very often?

A. Yes, sir.

Q. And you knew the substance of them?

A. Yes, sir.

Q. Is it fair to ask you in view of that familarity with conference forms and your general understanding of the subject matter, you felt yourself qualified to prepare the form that we have now referred to which is part of this Exhibit 12-C?

[fol. 1798] A. I will have to say it this way, I felt qualified to compose this particular form. It has no reference to any other contract form. It started out as a letter of confirmation and got into a little more formal shape as time went on.

Q. When you speak of a letter of confirmation, will you kindly look at Exhibit 9 and say whether that is one such document that you now refer to?

A. No, sir. This was made up by the agents of the Isbrandtsen-Moller Company in Holland, and possibly was based on their understanding of what a proper confirmation would be. I did not prepare that.

Q. That, however, came from the files of your company, did it not?

A. Yes, sir.

Q. I show you Exhibit 11 and ask you to tell us about that.

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A. That is something along the line I spoke of as being a letter of confirmation.

Q. Did you prepare that?

A. Yes—just a moment—no, sir, I don't believe I did.

Q. That came from your files, however?

A. Yes, sir.

Q. Your company signed it?

A. Yes, sir, Mr. H. C. Matlack.

Q. Is he now with your company?

A. No, sir—hasn't been for some years.

[fol. 1799] Q. He was a shipping man, was he?

A. Yes, sir, while he was with the company, he was.

Q. Traffic?

A. Yes, sir.

Q. Do you know of any other forms of contract or commitment that Isbrandtsen-Moller Company had in the period 1926 to 1939?

A. No, sir, I am not sure about it. I tried to locate our complete files, that the war years intervening have caused them to be stored in several places, and I couldn't locate them. However, they are all on file with the United States Maritime Commission since 1934 when Docket 128 went into effect.

Q. Well, wasn't it some little time before you made files under that docket, under 128?

A. We did not file at first simply letters of confirmation.

Q. Yes, but weren't your filings under that docket deferred for a time while you tested out the question of whether the Commission had the right to require filings?

A. They were deferred for a while, but I don't recall just how long.

Q. Well, the subject matter was covered in the case of Isbrandtsen-Moller against the United States, which went to the Supreme Court?

A. Yes, sir.

[fol. 1800] Q. And it was after the decision in that case that you gentlemen complied with the Commission's filing order?

A. Yes, sir.

Q. Mr. Crinkley, I show you another document which

purports to be on the letterhead of the Isbrandtsen-Moller Company.

A. Yes, sir.

Q. Is that the letterhead of the Isbrandtsen-Moller Company?

A. It was the letterhead that was in use at that time, yes, sir.

Q. Do you recall what time that was in use?

A. Wait a minute, just one moment, I will see if I can—(examining the document)—I think I would have to put it over a range of late, the late 1930's. I don't believe I know what year.

Q. Well, that is substantially in the form, is it not, of the document which is Sheet 2 of Exhibit 12-C?

A. Yes, sir.

Q. And would you say that that was the form in which the offer to make a contract rate was put forward to shippers as distinguished from being included in the tariff on file with the Maritime Commission?

A. Well, I believe, as I see it, I haven't read it word for word, it is the same thing.

Q. It is the same thing, except, I think, the very final paragraph. I think that does not appear on the other.

[fol. 1801] A. I think this is the form except for the number of copies that were to be made to be sent back.

Q. But that was the form in which it was sent to shippers, I take it?

A. Yes, I seem to think so.

Mr. Hupper: I will ask to have that marked.

Mr. O'Connor: No objection.

Examiner Robinson: It will be received as Exhibit 25.

(The document above referred to was marked Exhibit 25 in evidence.)

Mr. Hupper: That is all I am going to ask Mr. Crinkley.

Cross-examination

By Mr. O'Connor:

Q. Mr. Crinkley, looking at this form of the contract again that is attached to 12-C, as I understand from your

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previous testimony when you enter into an arrangement with some shipper, you gave him this letter of confirmation as you call it, on your letterhead, is that correct?

A. Yes, sir.

Q. Now, the first sentence refers to: "Covering your shipments, commodities, and ports shown below during the period from ——— to ———, did you have any uniform time as to the period that you fixed the business with the [fol. 1802] shipper?

A. No, sir, as a rule the shipper requested a commitment as to a rate for some given period, in whatever that period was, and if we agreed to it we confirmed the arrangement for the same period.

Q. Would that run for a year in some instances?

A. It might run for a year in some instances, and did run for a year in some instances, I am sure.

Q. You, now, as to the language, "we confirm arrangement agreed upon covering your shipments, commodities, and ports shown below," did you, in each instance, specify the commodities which were covered by this confirmation?

A. Yes, sir.

Q. And the ports?

A. The commodities and the ports and the rates.

Q. Of course, that was all done in the name of Isbrandtsen-Moller Company, not the Isbrandtsen Company that is the complainant in this case?

A. That is true.

Q. Yesterday Commodore Lee, in testifying, said something about the reluctance of his company to take a single shipment from a single shipper. Do you recall that?

A. Yes, sir.

Mr. Hupper: He didn't testify he was reluctant, at all, he said it didn't generally happen.

[fol. 1803] Examiner Robinson: I heard him say he wouldn't fool with him.

Mr. Cockrum: What was the language exactly?

By Mr. O'Connor:

Q. What has been your attitude, the attitude of your company?

A. As a traffic manager I have always been glad to get every single shipment I could get my hands on, whether it was large or small, a single shipment, or many shipments, wherever there was some legitimate business to be done, we want to do it.

Q. Now, you, in connection with this Docket 512 which pertains to the situation in the Levant case as to flour, you remember that, where the conference reduced the rates from 40 cents to 10 cents, do you remember the title of that decision of the United States Maritime Commission in that matter—well, it had the word "cartel" in it, didn't it?

A. Yes, the word "cartel" is in there.

Mr. Hupper: You say, in the title of the case?
The Witness: It was in the proposed report.
Mr. Hupper: It didn't say you were a cartel?
The Witness: No, sir, we have never been accused of that.

By Mr. O'Connor:

Q. It was in connection with the investigation of cartels [fol. 1804] in that trade?

A. That's right.

Mr. O'Connor: That is all.

Redirect examination

By Mr. Hupper:

Q. Mr. O'Connor just referred to, Docket No. 512, and you indicated that your quotations were generally made for 90 days, didn't you?

A. Yes, sir. We have more or less understood our rates are good for that minimum period any time.

Q. If anybody wanted a longer period, why, you would accommodate, I take it?

A. I am always ready to sit down and reason with the customer about that, or any other phase of the business, always ready.

Q. It has been your observation that that is what the other carriers do to accommodate the shipper whenever it is possible, do they not?

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A. I don't believe I can hardly — that.

Q. Well, you haven't heard of any instances where any intelligent carriers failed to do that on request, have you?

A. Well, I have gotten a lot of very nice accounts who needed protection on long accounts for the reason that the conference wouldn't accommodate them.

Q. You don't know whether the conference would or would not?

[fol. 1805] A. That is what the shipper said, and some very responsible ones. I can name them, if you wish.

Mr. Hupper: That is all.

Mr. McGovern: Mr. Examine in connection with the last question asked the witness Mr. O'Connor, may I, merely for the purpose of the record, point out that at page 489, the record reflects that question by Mr. Hupper:

"Q. I hold in my hand a copy of the Commission's report in Docket 512, which was entitled 'cartel' to Adriatic, Black Sea and Levant ports."

Examiner Robinson: That should be cargo, I know that myself.

Mr. Hupper: That is another joke on me.

Recorss-examination

By Mr. McGovern:

Q. Mr. Crinkley, I would like to show you a letter dated May 20, 1949 from the Schaefer-Hauser Corp. and ask you if you know what that letter is?

A. Yes, sir, I know what it is.

Q. What is it, and how did it come into your possession?

Mr. Hupper: I want to see the letter.

Mr. O'Connor: Let him identify it. You can go ahead.

The Witness: It is a copy of a letter written by that firm to the Attorney-General, Department of Justice, giving [fol. 1806] this shipper's view of the exclusive patronage contract used by the conference.

Mr. Hupper: Well, now, I object to any letters from anybody without the person being here ready to cross-examine

him. Letters to the Department of Justice have no place in this case.

By Mr. McGovern:

Q. How did you come to have a copy of the letter, Mr. Crinkley?

A. The people who wrote the letter sent me a copy of that letter.

Q. For your information?

A. Yes, sir.

Mr. McGovern: We offer the letter in evidence, Mr. Examiner.

Mr. Hupper: I object to the letter being received in evidence. I have got a right to see the fellow face to face and examine him. Correspondence between shippers or anybody else in the Department of Justice has no place in this case, and I object to it.

Mr. McDowell: I would like to see the letter.

Mr. Hupper: I don't care what the letter says, correspondence with outside people has nothing to do with this case and ought not to be offered. We should offer barrels of letters, but what would that mean?

[fol. 1807] Mr. McDowell: You say barrels of letters?

Mr. Hupper: We could offer a barrel of letters, but where does that get us, and how does it help?

Mr. McDowell: Mr. Examiner, may I make a statement on that?

Examiner Robinson: Yes.

Mr. McDowell: I have no objection to the reception of the letter provided that the offer of the letter is limited to the purpose of showing the state of mind of the shipper, and not to show anything as to the facts, or to be taken as an indication of the truth of the facts of the statement made in the letter.

Mr. Hupper: A letter from the shipper has no place in this case. His state of mind might be quite different if I cross-examine him.

Mr. McGovern: Mr. Examine-, I would agree as to the state of mind to the shipper, that there might be very serious objection to the admissability of this and about nine-tenths of the other evidence in the record. However, witnesses

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have been called, particularly Mr. Andrews, and allowed to testify that the shippers have recommended they wish and desire to have the contract system enforced. With regard to the objection posed by Mr. McDowell, I would agree*m* of course, that normally the reception of the letter would be barred by the rule against hearsay, except there is a familiar [fol. 1808] exception to the hearsay rule, with which I am sure you are familiar, that in case the declarant's state of mind is involved, then the hearsay rule is not applicable, and this type of letter may be received, and at that point may I simply read you a prevailing decision from the Circuit Court——

Mr. Hupper: I don't think so——

Examiner Robinson: Wait a minute, I don't think we need go any further. I appreciate the inherent deficiencies in this letter but there is nothing in here to show what conference he is talking about when he said he called it to the attention of his conference. I appreciate the fact that the man is not here to be cross-examined, but even under those circumstances I will admit it in evidence for what it is worth.

Mr. Hupper: It is worth nothing, and I respectfully request you exclude it from evidence. It is quite unfair to have that kind of a statement in the record.

Examiner Robinson: I think I can sort of siphon off the good part of it, if anything. It will be marked Exhibit 26.

(Document above referred to was marked Exhibit 26 in evidence.)

Mr. Hupper: I move to strike it from the record.

Examiner Robinson: Overruled.

Mr. McGovern: In so far as the weight of that document is concerned, Mr. Examiner, I assume, of course, the weight [fol. 1809] is no greater or no less than declarations by Mr. Crinkley and other witnesses as to the state of mind of the shippers they have observed.

[fol. 1810] Examiner Robinson: I think we all recognize the weaknesses of it.

Mr. Hupper: How many states of mine have we got to observe in this case? I thought we had a definite procedure.

By Mr. McGovern:

Q. Mr. Crinkley, I show you a letter dated May 24, 1929 from Ciba Company, Inc.

Mr. Hupper: Now, all right, it has been understood between Mr. O'Connor and myself that you are not going into the shipper business, and I tell you gentlemen if you proceed with this, I shall proceed with shippers. Take your choice. You wait until the very end and then bring forward things like that, doubtless stirred up with the complainant's people.

Examiner Robinson: I haven't read it.

Mr. Hupper: I won't agree to it, and I tell you that this proceeding is going on further if you persist in this effort.

Examiner Robinson: Can't we just agree that each side could get just oodles of witnesses?

Mr. McGovern: I think so. The fact remains, though, that there was a very substantial shipper witness produced by Mr. Hupper——

Mr. Hupper: He was introduced as a professor, but it [fol. 1811] turned out he knew something about shipping.

Mr. McGovern: Very incidentally, I am sure.

Mr. Hupper: By agreement with Mr. O'Connor, we weren't going to do it, and he asked me only yesterday——

Mr. O'Connor: I don't know as it was an agreement about shipper witnesses, but the fact is——

Mr. Hupper: Well——

Mr. O'Connor: If you will let me explain: these letters came in within the last 24 hours.

Mr. Hupper: I don't care when they came in.

Mr. O'Connor: They are just letters along the same lines as the other letters that were put in, and I think there are only two, two or three.

Mr. McGovern: Two, yes.

Examiner Robinson: Let me put myself on record that I am here to stay as long as you want. All I am trying to do is to see you gentlemen get through.

Mr. McGovern: The point I am trying to make is this, Mr. Examiner, I don't know what arrangement Mr. Hupper may have had with Mr. O'Connor——

Mr. O'Connor: No arrangement at all.

Mr. McGovern: —and I don't know how—incidentally,

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Mr. Rosenthal's testimony was about shippers, but you may recall quite clearly, as the record shows, that he testified that he was Chairman of a committee of shippers, and Mr. [fol. 1812] Hupper elicited from him the statements as to the willingness and desirability of the Conference system.

Mr. Hupper: I hadn't seen Mr. Rosenthal until about an hour before.

Examiner Robinson: If that letter is competent and you want to put it in, I will let it go in. That is what I am here for.

Now, what arrangements you people have, whether you want to quit early, that is up to you.

Mr. Hupper: I say it is not competent, it is irrelevant and unfair to put in this document.

Examiner Robinson: I don't know what the letter is. I haven't seen it.

Mr. Hupper: A letter somebody wrote which was probably stirred up by somebody on the complainant's side.

Mr. McGovern: How do you know that?

Mr. Hupper: I know how these things are done.

Mr. McDowell: You have been told?

Mr. Hupper: I know how expert you people are at doing it.

Examiner Robinson: None of us knows what the letter is except the man that is offering it, and if it is a relevant letter, it can go in.

Now, whether you folks get out of here today, tomorrow, or next week, is immaterial to me.

[fol. 1813] Mr. McGovern: I haven't offered it yet. I showed it to the witness and asked him to identify it. He hasn't done so.

By Mr. McDowell:

Q. Mr. Crinkley, can you identify that letter I showed you?

A. Yes, I can identify it.

Q. Would you do so, please?

A. This is a letter from the Ciba Company, Inc., of New York, including a copy of a letter they wrote to the United States Maritime Commission under date of May 24, 1949, re: Isbrandtsen Co., Inc. versus North Atlantic Continental

Freight Conference, and has to do with the imposition of the Conference contract system.

Q. Do you gather that that letter written to the Maritime Commission is written with specific reference to this proceeding?

A. Yes, it says: "Re: Docket No. 684."

Mr. McGovern: Will you show the document to Mr. Hupper, please?

(The witness handed the document to Mr. Hupper.)

Mr. Galland: May I see it, Mr. Examiner?

Mr. McDowell: I would like to see it, please.

Mr. Galland: Mr. Examiner, I missed part of what was going on, I was on the telephone, but I would certainly like to suggest that the test of the paper in evidence is not [fol. 1814] alone whether it is relevant, but whether it is incompetent, and it seems to me that it is a strictly legitimate objection, that that type of letter is strictly hearsay, and that it is a reasonable and substantial objection.

Examiner Robinson: Wait a minute before we go into that. Nobody has offered the letter in evidence yet.

Mr. Hupper: I will say this, so you may be posted on my point of view. If the letter goes in, I shall call the gentleman who wrote them and cross-examine him.

Examiner Robinson: Do you offer it in evidence?

Mr. McGovern: Yes, if everyone has looked at it, Mr. Examiner, I now offer the document in evidence.

Mr. Hupper: I object to it.

Examiner Robinson: Well, normally I would have no objection to that letter, if it was an ordinary letter, but I think where there is a proceeding going on and a person has had the opportunity to intervene, and he tries to put in testimony indirectly through the Commission after this thing has started for hearing, I think it is highly irregular that that should be introduced in evidence, and on that ground only I will exclude it.

Mr. McDowell: Before you rule on that, please, Mr. Examiner——

Mr. Hupper: Both those people are in New York.

Mr. McDowell: (continuing) —I would like to know

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[fol. 1815] whether this letter had come to the attention of counsel for the Maritime Commission prior.

Mr. Galland: No, it had not. It is dated some time in May, May 24th.

Examiner Robinson: I think it is too late, in the course of ordinary correspondence—I don't mean that in a mean way—trying to influence something without people being here to cross-examine in an actual proceeding.

I don't think that is right.

Mr. Galland: I will be very glad to call the gentleman who wrote that letter, on behalf of the Commission.

Mr. O'Connor: Suppose we mark it for identification, and take your exception on the ruling.

Mr. McDowell: Of course, it would be preferable to have the author of the letter testify and be available for cross examination, particularly since he says he wants to make his views known to the Commission.

Examiner Robinson: That's right. In something so highly controversial as this, I certainly would not feel at liberty, under the state of present proceedings, to admit the letter, not because it is a letter, because I have admitted other letters, but because it was written after this thing was set for hearing and is an indirect way of getting into this hearing. I have got a duty to perform.

[fol. 1816] Mr. McDowell: I was going to suggest, though, that even though that would be preferable, and certainly the letter would not have any weight as to the facts stated or contained therein, it seems to me even in the absence of the witness being produced, if it is not going — be possible to have him appear and testify, the letter is admissible on the state of mind rule under which the preceding letters were admitted.

Examiner Robinson: No, I think there is a line of demarcation here that I am not prepared to go beyond.

Mr. O'Connor: I understand your ruling.

Mr. McGovern: I am not entirely clear on one point, Mr. Examiner; are you excluding this on the point, not hearsay, but on the ground this particular letter relates to something that has transpired since this proceeding began?

Examiner Robinson: Yes, that is it. I have admitted lots of letters, and ordinarily I would let it come in, but

I think you will agree with me that this proceeding has reached the point where somebody is trying to inject his thoughts in here without coming in the front door, and I don't think that is proper.

Mr. McGovern: Well, now, I want to point out, Mr. Examiner, that Mr. Rosenthal was permitted to testify in response to direct questions from Mr. Hupper as to what [fol. 1817] he understood the views of the other shippers were, and that appears here in considerable amount on page 840 and running through for a considerable number of pages.

Now, is it your judgment that it is more appropriate for me to ask Mr. Crinkley if he has received communications from other shippers, and if so——

Examiner Robinson: You have already asked Mr. Crinkley that, and the sum and substance of it was in your conversations with shippers throughout all these years—I may be adding a few words to it, "what has been your reaction," and nobody objected, and I certainly have let that come in.

By Mr. McGovern:

Q. Well, let me ask you once again, Mr. Crinkley, whether or not in your contact—let me phrase the question this way: Did you hear the testimony of Mr. Rosenthal when he was testifying here?

A. Yes.

Q. Did you hear him state that as Chairman of a Council of importers, he said that he represented their views but he said that he thought the contract system was desired by shippers by and large?

A. Yes.

Q. Have you, yourself, had contact down through the years with shippers, large and small?

[fol. 1818] A. A great many.

Q. Up to and including the beginning of this proceeding?

A. Exactly.

Q. In your judgment, did Mr. Rosenthal's characterization and the view of the shippers square with your experience with the shippers?

A. By no means.

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Q. What has your own experience been?

A. My own experience has been that shippers generally dislike very much the Conference contract system. They have taken the same view as the witnesses did in Docket 648 on the Pacific Coast Conference, where every one of them testified that they didn't want it, didn't like it, and only signed it because they felt they were forced to do so.

That is the general attitude of shippers.

Q. Do you think that view expressed by the shippers in Docket 648 is fairly typical of shippers generally with regard to the Conference system?

A. That is the way I found it over the 19 years.

Mr. Hupper: Now, do I understand the first letter is in?

Examiner Robinson: Yes.

Mr. Hupper: All right. I give notice then that tomorrow morning I shall try to get that gentleman here for cross examination.

[fol. 1819] Now there is one thing you can do if you wish. I am not running this proceeding, but I have an idea how it should be run. I think it is certainly unjust to include in this record, even by marking for identification——

Mr. O'Connor: What harm can that do?

Mr. Hupper: Supposing you wait just a minute, Brother O'Connor. I have got a right to have my say—certainly unjust to include in this record pieces of paper on which people who have a state of mind, let us say, write to the Attorney General, or they write to somebody else, and far beyond that, and I would be willing in line with the suggestion made by the Examiner a moment ago, providing the letters both are excluded, to have a statement made that either side could produce any number of shipper witnesses indicating many of them in favor of the Conference contract rate system, and others who are not.

Examiner Robinson: Why can't we do that?

Mr. Hupper: If that is a good way to do it, I am for it, but if that can't be done, why, this proceeding is going on a considerable of time further.

Mr. O'Connor: Well, I don't know as you control that situation exactly.

Mr. Hupper: I come very near it. I have got the right to put on as many witnesses as I want to.

Mr. O'Connor: We have got a right to offer papers, [fol. 1820] and if they are ruled out by the Examiner, we can have them marked for identification.

Mr. Hupper: I think you are talking about different papers, Mr. O'Connor. I am talking about this one. (indicating)

Mr. O'Connor: You said it shouldn't even be marked for identification.

Examiner Robinson: I don't agree with that. It can certainly be marked for identification.

Mr. Galland: You can mark the Cunard Building for identification. This letter, too, was written during the course of this proceeding. (Indicating)

Mr. Hupper: I know how alert some people are—they get letters.

Examiner Robinson: There is nothing in the first one to indicate it had anything to do with this. The other one is definitely in connection with Docket 684.

Mr. McGovern: Before we all expatiate any further on it, let me get on the face of the record this ruling of the Second Circuit Court of Appeals. I think it would be helpful.

Mr. Hupper: We don't have to discuss law here, do we?

Mr. McGovern: I think we do, for your benefit.

Examiner Robinson: Go ahead and do it.

Mr. McGovern: In the Greater New York Poultry Cham- [fol. 1821] ber of Commerce versus the United States, Mr. Examiner, reported in 47 Fed. (2) 156 CCA (2) 139, the Circuit Court for this Circuit stated the rule as follows:

"A number of assignments of error relate to the administration over objection of the testimony of witnesses for the prosecution as to the reasons given by receivers for the refusal to sell to recalcitrant market men. Such statements of reasons, though hearsay, are admissible to prove the state of mind of the declarant if that be in issue."

Now, we suggest that the rule is quite clear. The reason, frankly, why we are offering these letters now is to countervail to the extent we possibly can the prejudicial effects of Mr. Rosenthal's testimony.

Now, it is well enough for Mr. Hupper to suggest he thought he had some kind of an agreement. The fact re-

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mains that Mr. Rosenthal was solicited by questions by Counsellor Hupper——

Mr. Hupper: He was not.

Mr. McGovern: —to testify.

Mr. Hupper: He was not. I never saw him until luncheon that day; never talked with him.

Mr. McGovern: All I can say is Mr. Hupper is very fast on his feet, because he certainly took the hints awfully [fol. 1822] rapidly.

Examiner Robinson: Well, now, I appreciate that, and this letter here to the Attorney General is in, but the point I am making is, I should think you gentlemen could very easily agree you could get all kinds of letters on both sides.

Now, that is up to you; I will stay here, but not beyond tomorrow night, and if you want to put them in tomorrow, that is all right, but I should think we could all recognize——

Mr. Hupper: I don't know how many hundreds we have got here.

Examiner Robinson: You have got them by the barrel on both sides, and we can agree they will say the worst things possible on each person's side.

Mr. McDowell: Well, I think we ought to recognize here —I think we can agree that certainly the state of mind of the shippers is in issue in this proceeding.

Mr. Hupper: Certainly not.

Examiner Robinson: On the first day when you brought up the matter of the exchequer, or some matter like that, I said regardless of what he said, I would agree if it meant something, I would let it in.

Mr. McGovern: Could we have a couple of minutes now? [fol. 1823] Examiner Robinson: Certainly.

(A short recess was taken.)

Mr. McGovern: Mr. Examiner, pursuant to the suggestion made before the brief adjournment, we withdraw the two letters that have been marked for identification.

Examiner Robinson: 26 is in, and we will add to show that it is in for identification, and the Ciba letter will also be received as No. 27 for identification.

Mr. McGovern: We withdraw our offer into evidence of the documents marked for identification 26 and 27.

Examiner Robinson: And keep them in merely for identification?

Mr. McGovern: Keep them in for identification.

(Exhibit 26 in evidence withdrawn from evidence and marked for identification only.)

(Letter referred to from Ciba marked Exhibit 27 for identification.)

By Mr. McGovern:

Q. Mr. Crinkley, do you recall that during the examination of Mr. Andrews——

Mr. Hupper: Mr. McGovern, as I understand it, the Examiner made a suggestion that both sides could doubtless produce barrels of letters, which serve no purpose.

Mr. O'Connor: There is no reason for that now. We have withdrawn them.

[fol. 1824] Examiner Robinson: He has withdrawn both of those.

Mr. Hupper: But they are in for identification.

Examiner Robinson: That's right.

Mr. Hupper: I want to say for the respondents that I could produce any number of letters for identification which, on the opposite side would be the same for the respondents.

Examiner Robinson: I am sure we agree.

Mr. Hupper: Let it rest there.

[fol. 1825] Mr. McDowell: The Attorney-General gets lots of letters, and it happens I haven't seen this one, but I am sure we could produce several hundred letters.

Examiner Robinson: Now, we are all agreed. Let's not spoil the party. Let's go on from here. Go ahead, Mr. McGovern.

By Mr. McGovern:

Q. Mr. Crinkley, do you recall during the testimony of Mr. Andrews, in response to questions from counsel from time to time as to the operation of the contract-non-contract system which he proposed to inaugurate for the conference on November 1st, that he repeatedly stated that no

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such system ever had been put into effect, and upon further questioning it appeared that he was referring to the fact that the issuance of the temporary injunction by the District Court in New York had suspended the operation of the proposed introduction of the system. Now, is it your experience that the shipping trade generally is aware of that fact?

A. My experience is that the shipping trade generally is aware of that fact, but apparently there are some people who are laboring under the impression that they are bound by these conference contracts which may have been signed prior to November 1st.

Q. Well, did you get the impression from Mr. Andrews' testimony that the conference had sent out letters to the [fol. 1826] shippers who had signed those contracts notifying them that they were inoperative?

A. No, sir, I believe he testified he put them all in a certain file drawer, and just left them there. That was the way I understood his testimony.

Mr. Galland: Mr. Andrews is here.

Mr. Andrews: That was my testimony.

Mr. McGovern: You sent out notices?

Mr. Andrews: I did not. I put the agreements in one file cabinet. They are still there; just laid them aside, in other words, and did not put them into effect.

By Mr. McGovern:

Q. Now, has the Isbrandtsen Company and have you, as its chief traffic officer receiver communications that shippers are under the impression that the contract system is in effect?

A. We have received such advices from some shippers.

Q. I show you two letters from Vinke Company to Isbrandtsen Company, rather a cable and a letter, and ask you if you received those documents from Vinke & Company?

A. Yes, sir.

Q. Would you show the document to counsel, please?

A. This concerns eastbound cargo. (handing the document to Mr. Hupper)

Q. Mr. Crinkley, can you identify those two letters I showed you, please, and state how you came to re-
[fol. 1827] ceive them?

A. One of them is a cable to us.

Q. Let me correct the record. I should have said the cable and the letter.

A. One of them is a cable to us from our agent in Amsterdam, dated May 25th, and received by us on May 26th, indicating that an importer in Holland had been advised by an exporter here that they could not ship with my company because of a contract they had signed with the conference.

Q. Would you identify the other letter?

A. The letter is also from our agents, Vinke & Company, of Amsterdam, dated May the 19th, 1949, and received by my firm on May 23rd, 1949, having reference to shipments of leaf tobacco consigned to what he terms Local Government Tobacco Bureau, in which one of the members of the board of that Tobacco Bureau stated to our representative that they were bound by a contract to the conference, which contract expires in July and August, and on account of which they have not been able to consider shipping with my company.

Mr. McGovern: We offer those two documents in evidence, Mr. Examiner.

Examiner Robinson: Is there any objection?

Mr. Hupper: No. He can certainly state he received letters from people.

Examiner Robinson: The cable will be marked Exhibit [fol. 1828] 28, and the airmail letter will be marked Exhibit 29.

(Documents above referred to were marked Exhibits 28 and 29 in evidence.)

By Mr. O'Connor:

Q. Mr. Crinkley, you recall after the granting of the injunction by the three-judge court here in New York, that it came to your information that shippers who had signed contracts were being told that they were bound, that they

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were bound by those contracts, despite the in-unction, you remember that?

A. I remember some shippers understood that they were bound.

Q. Pursuant to that you wrote a letter to Mr. Andrews in the conference, did you not?

A. Yes. Yes, I did, I wrote a letter to the conference.

Q. And we received a reply from Mr. Hupper, counsel of the conference, did we not? Do you recall my showing it to you?

A. My recollection is that you received a letter from Mr. Hupper.

Q. Was it your understanding, then, that the shippers who had signed up would be informed that the contracts were ineffective due to the injunction?

Mr. Hupper: I object to the question what his understanding was. What was he told.

By Mr. O'Connor:

Q. Were you so informed by the conference sources that that misunderstanding would be corrected?

[fol. 1829] A. I was so informed——

By Mr. Hupper:

Q. By whom?

A. Mr. O'Connor.

Mr. O'Connor: From a letter I received from you.

Mr. Hupper: I received a letter from you suggesting certain things, which I investigated, and wrote back to you in substance as I recall, that there was nothing to it.

Mr. O'Connor: Is it unfair to say, Mr. Hupper, that you gave me to believe in that letter that if any shippers had the idea the contracts were effective that that misconception would be eradicated?

Mr. Hupper: I didn't say any such thing. I said in substance that I had inquired into the comments that you made that people were saying they were being pressed by the lines, or something, and that you were going to take somebody to court, and I investigated it and wrote back to you

that I understood there was no substance to that comment that you made, I had not the slightest doubt in good faith. But I never made any promise to anybody, neither had I requested Mr. Andrews to make any promise that he would write to the shippers saying that the contract was not in effect.

Examiner Robinson: I appreciate the gravity of this thing from your point of view, but I mean, I don't see very well how any responsibility, in so far as this present pro-
[fol. 1830] ceeding goes rests upon the conference to advise him.

Mr. O'Connor: I just want to know what the situation was, that we understood that there wouldn't be any attempt on anybody's part to effectuate, as the court order said, any of the existing contracts which were signed.

Can we be sure there won't be any attempt on the part of the conference lines——

Mr. Hupper: We never had the slightest thought of violating an injunction, and don't intend to. I might say as far as information goes, the injunction hadn't been out ten minutes before Mr. Isbrandtsen and his people issued telegrams, which were apparently all ready, and there was wide advertising in European newspapers as well as the papers here covering the subject.

Examiner Robinson: I think we understand each other.

Mr. O'Connor: As long as we get that assurance we are all right.

Mr. Hupper: Well, remember what I said.

Examiner Robinson: Would you like to withdraw those things, or still leave them in there with that assurance, that letter and cable?

Mr. O'Connor: Oh, yes.

Mr. McGovern: I offered them primarily, Mr. Examiner, in connection with Mr. Andrews' testimony.

[fol. 1831] Examiner Robinson: I am not going to try to keep them out. I thought in view of what has transpired you might wish to withdraw them.

Mr. Hupper: I have no objection to people putting in what somebody thinks.

Examiner Robinson: Are there any other questions of Mr. Crinkley?

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(No response.)

(Witness excused.)

Mr. McDowell: Mr. Examiner, I would like if we might get Mr. Isbrandtsen back on the stand for a moment, like to ask him one question which won't take very long.

Mr. McGovern: Where do we stand at this juncture? What comes next?

Mr. Hupper: Well, I have got one modest matter here I would like to take up.

HANS ISBRANDTSEN was recalled, having been previously sworn, testified further as follows:

Cross-examination (continued).

By Mr. McDowell:

Q. Mr. Isbrandtsen, are you in this case attacking the conference system as distinguished from the exclusive patronage contract rate system?

A. No.

[fol. 1832] Q. Is it your understanding that the conference system as distinguished from the exclusive patronage contract system is brought about by means of an agreement among shipping lines of a particular trade?

A. Yes.

Q. Which is approved by the Maritime Commission?

A. Yes.

Q. And that under such agreement the conference lines, that is the lines which associated themselves thereby in a conference, are authorized to do certain things with immunity from both the Shipping Act penalties and from the Anti-Trust Laws?

A. Yes.

Examiner Robinson: Not from the Shipping Act penalties, because if they violate the Shipping Act——

Mr. McDowell. I mean by approval——

Examiner Robinson: No, you can't approve anything that violates the Shipping Act, you only get exemption from the Anti-Trust Laws.

Mr. McDowell: Yes, I fully agree with that. What I mean to say is, if they did the things without filing the agreement and getting it approved by the Commission, that they would be in violation of the Shipping Act as well as, perhaps, the Anti-Trust Laws. I think we understand each other.

[fol. 1833] Mr. Hupper: I object to questions to Mr. Isbrandtsen on points of law.

Mr. McDowell: Well, Mr. Hupper, I don't intend to go into any of the law.

Examiner Robinson: Go ahead, Mr. McDowell.

By Mr. McDowell:

Q. Your understanding is by virtue of the Maritime Commission's approval of the conference agreement that the members of the Conference are given certain privileges with respect to agreeing upon rates, sailing dates, other matters which normally would be arrived at competitively; is that correct?

A. Yes, sir.

Q. Do you believe that it is necessary for the Conference Lines to practice the exclusive patronage contract rate system in order to maintain the Conference and secure those privileges?

Mr. Hupper: I object to that question.

Examiner Robinson: Read the question.

(Pending question read by the reporter.)

Examiner Robinson: Go ahead and answer it, if you know. That is what we have been talking about all the time, so I don't see any objection to it.

The Witness: They apparently find it desirable to use it.

[fol. 1834] By Mr. McDowell:

Q. Do you think that purely apart from the control over the trade which is assured to the Conference Lines by virtue of the exclusive patronage contract rate system, there are other advantages in the Conference which justify the existence and would bring about its continuance if it were not permitted to practice the exclusive patronage contract rate system.

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Mr. Hupper: I object, likewise, to that question. That is for the Conference members to decide.

Examiner Robinson: Well, it goes to the basis of whether or not he is——

Go ahead and answer it.

The Witness: If the conferences, my opinion is, and that is all I can give, my own opinion, that if the Conferences, or the Conference we are speaking about here, is well run and honestly run, the weight of the membership would always by an influence to attract business without the use of this system.

I am, in fact, not so sure that they wouldn't be better off not using it; certainly, the American lines would be better off by not using it, and my observation has been that they are incurring a certain amount of ill will by using it, but that is only my own opinion.

By Mr. McDowell:

[fol. 1835] Q. Well, you do not, by attacking the exclusive patronage rate system in this proceeding, seek to tear down or destroy or prevent Conference Lines from enjoying the benefit of the Conference Agreement as distinguished from the exclusive patronage system; is that correct?

A. Oh, that would be entirely futile for me to do that.

Examiner Robinson: I think he has said lots of times he has no objection as long as the law says to have the Conferences.

Mr. McDowell: Well, all right.

By Mr. McDowell:

Q. Go ahead and say what you want to about it.

A. I just wish to say that when I go into Macy's and buy I don't want to be penalized in Wanamaker's for doing so.

Examiner Robinson: You see, that goes to the Contract rather than the Conference itself.

Mr. McDowell: I merely want to bring out the point, Mr. Examiner, because I think the testimony has been a little confusing at times, not, I think, from this witness, but from other witnesses as to whether or not the issue here is narrowed to the exclusive patronage system or whether the

complaint attacks more broadly the Conference system as such.

Examiner Robinson: No, I don't think myself, I may be wrong, but I think Mr. Crinkley, for instance, said he knows it is lawful, and even though he personally does not like it, [fol. 1836] he recognizes that the law permits it and, after all, these two gentlemen are the complainants to all intents and purposes, so I don't think we misunderstood.

Is there any doubt in your mind?

Mr. O'Connor: In our first presentation we said we weren't attacking the Conference system.

Mr. Cockrum: Mr. Examiner, if I may interpolate just for a second, there has been plenty of evidence on the record already to the effect that if the exclusive patronage contract system is destroyed, the Conference itself will be destroyed.

Examiner Robinson: Well, that hasn't anything to do with it. That is another point. I will grant you there is oodles of that.

By Mr. McDowell:

Q. Did you want to make a point?

A. Well, there was just a remark that came to mind, and I believe the whole business of competition on the high seas needs a new approach, especially with this increased American participation, and we can't avoid that issue if American ships are to sail. But I don't believe it will be done by antagonizing shippers, if that is what is being done, and we say it is being done, or it can be done by excluding American citizens such as myself from operating in my own country, which this works out to be. And for such a thing [fol. 1837] we, for one concern, will never stand for, and we will go after it until we finish the job.

Mr. Hupper: Mr. Isbrandtsen, perhaps you have said it before, but you are perfectly aware of your right if you should wish to join the Conference, are you not?

The Witness: I am aware of that, Mr. Hupper, and I am not exercising that privilege.

Mr. McDowell: I haven't finished yet, Mr. Hupper.

The Witness: I do not wish to do it.

Examiner Robinson: I think both of you, if you don't mind my saying it, are just opening this up again, because we have got plenty on the record.

Mr. Hupper: He talked about exclusion. I just wanted to cover that one question.

The Witness. My view on exclusion still stands. As an American citizen, I can join or not join, the way I see fit.

Redirect examination.

By Mr. Hupper:

Q. That's right. It is a matter of choice.

A. My choice, not your choice.

Q. Absolutely. You know that if you do choose to enter the Conference, then you automatically have the right to participate in the contracts, but I still agree it is your choice whether you shall enter the Conference or not.

[fol. 1838] A. It is also my choice to go to an American Shipper and ask for his business on a free and open basis without having foreign lines come and tell me that I can't do it.

Q. And you exercise that choice freely and you do pretty well, don't you, day by day?

A. I am trying to do a good job on it, as good a job as I can, but I recognize the ramifications, and I recognize the difficulties.

Q. The shipping business is always a highly competitive one, isn't it, at all times?

A. The shipping business is a very bothersome business.

[fol. 1839] Q. Is it fair to call it the dizziest, the way one of my old clients did?

A. The bot-er*h*some part of it is that so many owners, instead of standing on their own, will go in cahoots with one another and build up an artificial empire that cannot be maintained. And I do say as my final say, if I may be permitted, I recognize that I am transgressing——

Q. That you are what?

A. That I am transgressing——

Examiner Robinson: No, you are not.

The Witness: That the whole business needs a new approach, something different than we have seen here before.

Mr. Hupper: Well, maybe somehow between you and other people, that could be devised, for all I know.

Mr. McDowell: Well, you are part of the American Merchant Marine, aren't you, Mr. Isbrandtsen?

The Witness: Yes, sir.

Q. And you don't think it fosters the American Merchant Marine to permit a group of lines to make it difficult for one member of the American Merchant Marine to stay in trade unless he chooses to accept their terms?

A. We are living in a free country.

Mr. McDowell: That is all.

(Witness excused)

Mr. Hupper: I might state I have here a document en- [fol. 1840] titled "International Transport, Report of Committee on International Transport," issued May 1949, issued apparently by the Transportation and Communication Department of the Chamber of Commerce of the United States, Washington, D. C., on pages 14 and 15 of which is a statement about rate conferences, which I would like to put in the record. I will distribute this to my friends.

Mr. O'Connor: I am very familiar with it, and object to it as a self-serving declaration.

Mr. Hupper: Not by me.

Mr. O'Connor: It is put out by a committee of the Chamber of Commerce of the United States, made up principally of members of Conference Lines.

Examiner Robinson: Do you object to it?

Mr. O'Connor: Yes.

Examiner Robinson: I sustain the objection.

Mr. Hupper: Now, wait just a minute. I haven't called a witness to identify this. I have a right to do it.

Mr. McGovern: We can identify it for you.

Mr. O'Connor: We have seen it and passed on it. If we had had an opportunity to appear before the committee in time, we would have presented our views. We never had the opportunity.

Mr. Hupper: I will ask to have it marked for identification. It is a document anybody can get hold of.

[fol. 1841] Mr. McGovern: For your information, Mr. Ex-

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aminer, in regard to the previous point of what appears on page 15 of the report, the conclusions that they favor are the continuance of the rate Conferences as permitted and authorized by the Shipping Act, and we don't object to those, but the facts that are set forth in this report are, of course, hearsay and therefore inadmissible.

Examiner Robinson: It will be marked Exhibit 30 for identification.

(Document referred to was marked Exhibit No. 30 for identification.)

Examiner Robinson: We will take a short recess now.

(A short recess was taken.)

HYMEN I. MALATZKY was recalled, having been previously sworn, testified as follows:

Direct examination.

By Mr. Hupper:

Q. Mr. Malatzky, I am not going to ask you any further questions. I will say that it is immaterial to me as counsel for the respondents whether you answer my question or not. You can just follow your own choice.

A. I am perfectly willing to answer all questions and make the entire position clear if the entire record of that [fol. 1842] incident is put into this record.

Examiner Robinson: Now, he is giving you permission not to do it.

The Witness: Wait a minute now——

Mr. McDowell: He has got part of it in the record already. He read part of it.

The Witness: Then I refuse to answer on something that has been taken out of the context, and which is equivalent to hitting below the belt.

Examiner Robinson: Would you be willing to withdraw that quotation, Mr. Hupper?

Mr. Hupper: No, I shall not, because the matter was injected into the case by the complainant's counsel.

Mr. McGovern: I deny that.

Mr. Hupper: You are the one who asked Mr. Andrews about it.

Mr. McGovern: I think, Mr. Examiner, you are the one who is responsible for injecting it in the case, I am sorry to say.

Examiner Robinson: I don't know what it means after I read it, so I am not responsible.

Mr. McGovern: I mean the colloquy appears in the record yesterday during Mr. Andrews' cross-examination, and it was between you and Mr. Malatzky and the witness. I didn't ask any questions about it.

[fol. 1843] Examiner Robinson: I don't even know what it deals with.

Mr. Hupper: Well, I have said it is immaterial to me whether he answers or not. He can follow his choice.

Examiner Robinson: If he doesn't answer it, then is it reasonable to say you are not going to press it any further?

Mr. Hupper: I am not going to press it any further.

Mr. O'Connor: I think in fairness, I understand his whole testimony isn't very long, that it should go in.

Mr. Hupper: Do you want to put this in and let everybody refer to it if they want to?

Mr. O'Connor: I think the whole testimony should go in rather than just this.

Mr. Galland: All right, we can stipulate to it.

The Witness: If you will let me bring up the points which I think would clear it up——

Mr. Hupper: I make this observation to you, Mr. Malatzky: If you go talking some more there is another question I am in position to ask you. If it is stipulated in, everybody can refer to it.

[fol. 1844] Examiner Robinson: Why don't you stipulate and let it go at that?

Mr. McGovern: The excerpt was set forth in the record by Mr. Hupper. I think that is what Mr. Malatzky is talking about.

Examiner Robinson: Yes, but I said it is agreeable that you can refer, if you want to, to the whole thing.

Mr. McDowell: Let's have the whole thing set forth on the record, then.

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(Discussion off the record.)

Mr. Hupper: So long as it is understood that counsel for the respondents here can, if they are so advised, refer to any portion they wish of that record in Docket 681 which Mr. Malatzky now holds in his hand, including the item which I cited in a question and which I am willing to have expunged physically from the present record, if that is desirable, then that procedure is agreeable to me.

Examiner Robinson: That is what I was trying to say.

Mr. Hupper: But only because I understand the matter had been put forward by complainant's counsel. I don't regard it as a matter in this case.

Mr. O'Connor: Do you want to explain it, or shall I?

[fol. 1845] Examiner Robinson: You take the responsibility.

Mr. O'Connor: The suggestion is, Mr. Malatzky, that what was asked you that was taken out of the record and asked you this morning, that be expunged from the record physically, and it will no longer appear in the record.

The Witness: That particular quotation? All right.

Mr. O'Connor: But this record in your Docket 681 will be a part of this case to which reference can be made by any counsel to any part of it.

Examiner Robinson: And if there is any part they bring out you don't like, you can put the correlative part in. Do you see what I mean?

The Witness: Yes.

(Witness excused.)

Examiner Robinson: Is there anything else?

Mr. O'Connor: What about minor corrections in the record?

Examiner Robinson: The rules provide how to do that. You can write your letter in showing them, and then we pass them around. It is provided in there what you do.

(Discussion off the record.)

Examiner Robinson: If there is no objection, Exhibit 14 for identification will be received in evidence.

[fols. 1846-1847] There being no objection, it will be received as No. 14.

(Exhibit 14, previously marked for identification, was received in evidence.)

Let the record show that briefs are due simultaneously on July 11, 1949.

(Whereupon, at 6:05 p. m., the hearing was adjourned.)

[fol. 1848] EXHIBIT "2"

Contract No. .....

CONTINENTAL NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Secretary:

E. R. HUMPHRIES
128, Ananasstratt
The Hague

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MEMORANDUM OF AGREEMENT, made this ..... day of ..... 19..... between ..... hereinafter called the Merchant ("Merchant" includes subsidiaries, affiliates and agents of any of them), and the several Steamship Lines named below, members of the Continental North Atlantic Westbound Freight Conference, hereinafter called the Carriers. It is understood and agreed that if any additional Line or Lines become members of the Continental North Atlantic Westbound Freight Conference, such Line or Lines shall thereby and thereupon become parties to this Agreement as carriers and the Merchant shall have the right to ship on such Line or Lines to the same extent as on the other Carriers, and should any Line or Lines cease to be members of said Conference, they shall simultaneously cease to be Carriers hereunder, and this Agreement shall thereupon terminate and expire as between the Merchant and such Line or Lines but shall remain in full force and effect according to its terms as between the Merchant and the Lines still remaining members of said Conference.

1. In consideration of the rates and other conditions stated herein, the Merchant agrees to offer, or cause to be offered to the Carriers for transportation by them, ALL

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SHIPMENTS moving via ports within the Hamburg/Belgian-French border Range to the North Atlantic ports of the United States of America between Portland (Maine) and Hampton Roads, both included, (whether the shipments are sold on f.o.b. or c.i.f. conditions) in which he may be interested, directly or indirectly, as owner of the goods, as agent, as exporter, as importer, or in any other capacity, with the understanding that the established Conference contract rates will apply from f.o.b. Hamburg, Bremen, Amsterdam, Rotterdam and/or Antwerp. Failure on the part of the Merchant to tender any of such shipments to the Carriers shall be a violation of this Agreement. The carriers agree, subject to the provisions hereof, to transport said shipments on their vessels sailing from their above-mentioned Continental ports of call to New York, Boston, Philadelphia, Baltimore and Newport News, Norfolk, for discharge at the individual Carrier's regular discharging berths, but for all other ports within the Portland Maine/Hampton Roads range (both included) the acceptance of goods is at Carrier's discretion, and the rates of freight subject to special arrangement, but such rates shall not be less than the contract rates stated herein.

2. The Merchant has the option of selecting any of the vessels advertised and/or operated by the respective Carriers between the ports mentioned, subject to agreement with the particular Line as to quantity and nature of the goods, and agrees to make application for space as early as possible before the selected vessel's advertised sailing date. The Carriers shall not be responsible for delays in receipt and transportation of the goods.

[fol. 1849] 3. If the Merchant makes any shipment in violation of this Agreement the Carriers shall have at any time the option to declare the Agreement terminated, without prejudice, however, to the right of the Carriers to also claim for losses suffered by such violation. In the event of the Carriers giving notice in writing to the Merchant, through the Conference Secretary, that the Merchant ("Merchant" includes subsidiaries, affiliates and agents of any of them), by reason of his having shipped by a Steamship Line or Lines not parties tot his Agreement, has rendered himself ineligible for contract terms, it is mutually agreed that the non-contract rates of the Carriers' current Tariff shall be

applied to all shipments made by the Merchant subsequent to the date of such notice. False declarations of merchandise, weights, measurements and/or values also shall constitute a violation of the Agreement.

The Carriers have full right of inspection, including opening of packages to determine true contents of same, and may require a copy of invoice (Consular Invoice, if issued) and other appropriate evidence of contents and/or value.

4. The commodities and the rates thereon to which this agreement applies (subject to the provisions of paragraph 5) are:

Other commodities shipped by the Merchant shall be deemed covered by this Agreement at the lowest Conference rates then in effect for the particular commodities. The rates of freight applicable under this Agreement are in U. S. A. currency, and the freight is payable in advance at port of shipment against documents, but any carrying Line may agree to accept payment of the freight in the United States of America, in which event the Merchant remains responsible for its payment.

Prepaid freight, if paid in the country of port of shipment, shall be calculated at the highest official rate of exchange for U. S. dollars prevailing on the day prior to vessel's departure.

When cargo is shipped from a German port on a prepaid basis the freight must be paid in U. S. A. dollars.

Freight payable at destination, and/or all other charges specified in the Bill of Lading, shall be paid before, or at the time of, delivery of the goods.

Should the Carriers reduce the contract rates of their current Tariff during the term of this Agreement, the Merchant shall be given the benefit of such reduced rates during the period same remain in effect.

5. Shipments are subject to all the provisions of the permit, dock receipt, and Bill of Lading in use by the Carrier when the shipment is tendered. If valuation higher than that provided by the regular form of Bill of Lading is desired by the Merchant it must be so declared before shipment and, in accordance with Tariff provisions, a higher rate paid than stated in this Agreement, except that this proviso shall not be applicable to cargo rated on an Ad Valorem basis.

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Minimum Bill of Lading charges, and heavy lift charges for pieces or packages over 2 tons weight, shall be as per current Tariff in effect at time shipments are made.

[fol. 1850] 6. In case of dispute under this Agreement the Merchant and Carrier(s) each agree to submit the matter to arbitration at the port of shipment, the ports being as before mentioned, each appointing an arbitrator and the two so chosen shall elect an umpire, to which arbitration committee all data requested in connection with the matter in dispute shall be made available. Decision of two or more members of said committee shall be binding to all parties.

7. This Agreement shall cover shipments as above specified on vessels scheduled to sail from port to which shipment is loaded during the period from to both dates inclusive, and shall continue in effect on the same terms and conditions throughout consecutive subsequent periods of six months, subject to the right of either the Merchant or the Carriers to terminate same as of June 30th, or December 31st, in any year by giving the other party ninety days written notice of termination.

8. In the event of the imminence *of* existence of war, hostilities or war-like operation between any Nations, blockades, embargoes, regulations of any governmental authority, or any official interference with commercial intercourse, exchange, or currency regulations, affecting the operations of the Carriers, or any one of them, in the trade covered by this Agreement, or any one or more of them, at their option shall have the right to cancel their individual participation in this Agreement forthwith.

BLACK DIAMOND STEAMSHIP CORPORATION
COMPAGNIE GENERALE TRANSATLANTIQUE
(FRENCH LINE)
COMPAGNIE MARITIME BELGE
(LLOYD ROYAL) S.A.
(BELGIAN LINE)
A/S J. LUDWIG MOWINCKELS REDERI
(COSMOPOLITAN LINE)
N. V. NEDERLANDSCH-AMERIKAANSCHE STOOMVAART-MAATSCHAPPIJ
HOLLAND AMERIKA LIJN/RED STAR LINE SERVICE
SOUTH ATLANTIC STEAMSHIP LINE, INC.
UNITED STATES LINES COMPANY
WATERMAN STEAMSHIP CORPORATION

(Signature for and on behalf of the above mentioned Steamship Lines)

(Signature of Merchant)

NOTE: Shipments shall be delivered at the port of shipment through:

(Name of Forwarding Agent or Agents, if designated)

[fol. 1851] EXHIBIT "3"

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE

(agreement No. 4490)

SCHEDULE OF RATES AND TARIFF RULES NUMBER 18
EFFECTIVE

For shipment on vessels schedule- to sail on and after July 1, 1946 on which date this tariff will supersede and cancel Tariff No. 17 and corrections thereto.

PARTICIPATING CARRIERS

A/S J. Ludwig Mowinckels Rederi (Cosmopolitan Line)
Black Diamond Steamship Corp. (Black Diamond Lines)
Compagnie Generale Transatlantique (French Line)
Compagnie Maritime Belge (Lloyd Royal) S. A.
Cunard White Star Limited
Dampskibsselskabet af 1912 A/S) A. P. Moller, A/S Dampskibsselskabet Svendborg) Maersk Line
Ellerman's Wilson Line, Limited (Wilson Line)
N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij (Holland America Line)
South Atlantic Steamship Line, Inc.
United States Lines Company (United States Lines)
Waterman Steamship Corporation

This rate list will not be supplemented. Changes will be made by reissuance of affected pages. Revised pages will bear correction number at bottom of page. To insure that all changes have been received, correction number should be checked on receipt on Correction Page immediately following.

Issued July 31, 1946 by Mr. C. R. Andrews, CHAIRMAN, 80 Broad St., New York 4, N. Y.

NOTE: Deletion of Restriction on Rates and Conditions.

CORRECTION No. 488—ISSUED OCT. 1, 1948.

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[fol. 1852] NORTH ATLANTIC CONTINENTAL TARIFF No. 18

(PAGE A-1 FOLLOWS) PAGE A

TARIFF RULES AND REGULATIONS

1. SCOPE. Rates and conditions of the members of the North Atlantic Continental Freight Conference on shipments from Atlantic and St. Lawrence ports of loading of Canada and from North Atlantic ports of loading of the United States in the Hampton Roads/Portland, Maine range to all ports of call in the Antwerp/Hamburg Range.

** 2. SHIPMENT PERIOD. All rates, unless otherwise provides, may be quoted for shipment on vessels sailing within 90 days after quotation is made. If month is shown after rate, commitment on that item is restricted or extended, regardless of general rule, to end of said month, otherwise bookings to be made subject to "current rate at time of sailing."

* 2a. CONTRACT RATES: This tariff provides "CONTRACT" and "NON-CONTRACT" rates on items indicated by the tariff.

Unless otherwise specified CONTRACT RATES will be those as appearing after each individual item herein named.

CONTRACT rates will apply only where merchant has executed contract under authority of Members of this Conference; otherwise the NON-CONTRACT rates provided herein will be applied.

CONTRACT rates will be afforded all merchants who desire to avail themselves of same by signing a contract with this conference. Applications for contract should be made to the Conference Office.

In quoting rates on contract commodities to non-contract merchants, Member Lines should advise that contract rates are available. On Shipments of contract commodities made by merchants not having Conference contract, bills of lad-

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* Addition effective for quoting OCTOBER 1, 1948 on shipments from Nov. 1, 1948.

** Deletion of NOTE.

CORRECTION NO. 489—ISSUED Oct. 1, 1948.

71—134 and 135

ing should be released only for actual payment of freight at non-contract rate and not against due bills.

Personal effects or belongings shipped as freight and covered by ocean bills of lading may be charged contract rates whether accompanied by passenger or not.

Contract rates will apply on shipments made in broker's names when the word "as agents" or "agent" appears after the broker's name and the name of the contract merchant holding Conference contract is shown on the Lines' copy of bill of lading.

The terms and conditions of the contract agreement with merchant apply only on commodities for which contract rates are shown herein.

CONTRACT RATES ON GOVERNMENT SHIPMENTS—, CONTRACT rates will apply on shipments of which any Government or Department thereof is the Shipper and/or Consignee without a signed Contract Rate Agreement.

See Page "M" for copy of Contract Form with Merchants.

[fol. 1853] NORTH ATLANTIC CONTINENTAL TARIFF No. 18
(Page A-2 follows) PAGE A-1

TARIFF RULES AND REGULATIONS

* 2b. Noncontract rates; The following are Noncontract Rates. These rates shall be determined by application of following Rate Chart, subject to exceptions as herein provided. This Rate Chart is based on curent contract rates as provided in tariff herein. For example, contract rate is 85/1.50 alongside this figure on Rate Chart you will find $1.00/1.80 which will be the Noncontract rate.

Exceptions

Following items are NOT subject to CONTRACT:

Ad Valorem Rates
Ashes, Human
Coal and Coke, in bulk
Corpse
Effects or Goods, Household or Personal
Explosives
Grain, in bulk
Livestock, Animals, etc.
Vans, Lift

Contract	Non-Contract	Contract	Non-Contract	Contract	Non-Contract
.25	.30	85/1.50	1.00/1.80	1.55/2.80	1.85/3.35
.30	.35	.90	1.10	1.60	1.90
.35	.40	90/1.60	1.10/1.95	1.60/2.90	1.90/3.40
.40	.50	.95	1.15	1.65	2.00
40/75	50/90	95/1.70	1.15/2.05	1.65/2.95	2.00/3.55
.45	.55	1.00	1.20	1.70	2.05
45/80	55/1.00	1.00/1.80	1.20/2.15	1.70/3.00	2.05/3.60
.50	.60	1.05	1.25	1.75	2.10
50/90	60/1.10	1.05/1.90	1.25/2.25	1.75/3.15	2.10/3.75
50/1.40	60/1.70	1.10	1.30	1.80	2.15
.55	.65	1.15	1.40	1.85	2.20
55/1.00	65/1.15	1.15/2.05	1.40/2.50	1.90	2.25
55/1.55	65/1.85	1.20	1.45	1.90/3.50	2.25/4.20
.60	.70	1.20/2.15	1.45/2.60	1.95	2.35
60/1.10	70/1.25	1.25	1.50	2.00	2.40
.65	.80	1.25/2.25	1.50/2.70	2.05	2.45
65/1.15	80/1.45	1.30	1.55	2.10	2.50
.70	.85	1.30/2.30	1.55/2.80	2.15	2.55
70/1.25	85/1.50	1.35	1.60	2.20	2.65
.75	.90	1.40	1.65	2.20/3.90	2.65/4.70
75/1.35	90/1.60	1.45	1.75	2.25	2.70
79/1.41	95/1.70	1.45/2.60	1.75/3.15	2.30	2.75
.80	.95	1.50	1.80	2.35	2.80
80/1.45	95/1.70	1.50/2.70	1.80/3.25	2.40	2.90
.85	1.00	1.55	1.85	2.40/4.30	2.90/5.00

*Addition effective for quoting October 1, 1948 on Shipments from Nov. 1, 1948.

Correction No. 490—Issued Oct. 1, 1948.

[fol. 1854]

North Atlantic Continental Tariff No. 18 (Page A-3 follows) Page A-2

Tariff Rules and Regulations

* 2b. Non-Contract Rates (Continued)

Contract	Non-Contract	Contract	Non-Contract	Contract	Non-Contract
2.45	2.95	6.90	8.25	22.75	27.25
2.50	3.60	7.15	8.60	23.00	27.50
2.55	3.05	7.60	9.10	23.25	28.00
2.60	3.10	11.25	13.50	23.75	28.50
2.65	3.20	11.50	13.75	24.00	28.75
2.70	3.25	12.00	14.50	24.25	29.00
2.75	3.30	12.50	15.00	24.50	29.50
2.80	3.35	12.75	15.25	24.75	29.75
2.85	3.40	13.00	15.50	25.00	30.00
2.90	3.50	13.25	16.00	25.25	30.25
2.95	3.55	13.50	16.25	25.50	30.50
3.00	3.60	13.75	16.50	26.00	31.25
3.05	3.65	14.00	16.75	26.50	31.75
3.10	3.70	14.25	17.00	26.75	32.00
3.15	3.75	14.50	17.50	27.00	32.50
3.20	3.85	14.75	17.75	27.50	33.00
3.25	3.90	15.00	18.00	27.75	33.25
3.30	3.95	15.25	18.25	28.50	34.25
3.35	4.00	15.50	18.50	28.75	34.50
3.40	4.10	15.75	19.00	29.15	35.00
3.45	4.15	16.00	19.25	29.50	35.50
3.50	4.20	16.25	19.50	29.75	35.75
3.60	4.30	16.50	19.75	30.00	36.00
3.65	4.40	16.75	20.00	30.25	36.25
3.80	4.55	17.00	20.50	31.75	38.00
3.85	4.60	17.25	20.75	32.25	38.75
4.00	4.80	17.50	21.00	33.00	39.50
4.05	4.85	18.00	21.50	33.25	40.00
4.30	5.15	18.25	22.00	33.50	40.25
4.40	5.25	18.50	22.25	34.50	41.50
4.45	5.35	19.00	22.75	36.75	44.00
4.50	5.40	19.25	23.00	38.00	45.50
4.75	5.70	19.75	23.75	65.00	78.00
4.95	5.95	20.00	24.00	70.00	84.00
5.20	6.25	20.25	24.25	$3,000.00	$3,600.00
5.65	6.75	20.75	25.00	3,300.00	3,960.00
5.70	6.85	21.00	25.25	5,000.00	6,000.00
5.75	6.90	21.25	25.50	5,500.00	6,600.00
6.00	7.20	21.50	25.75	12,500.00	15,000.00
6.20	7.45	21.75	26.00	35,000.00	42,000.00
6.35	7.60	22.00	26.50		
6.50	7.80	22.25	26.75		
6.60	7.90	22.50	27.00		

* Addition effective for quoting October 1, 1948 on shipments from Nov. 1, 1948.

Correction No. 491—Issued Oct. 1, 1948.

COPY BOUND CLOSE IN CENTER

[fol. 1855] EXHIBIT "4"

FOR PRIVATE USE OF THE LINES ONLY

CONTINENTAL NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

TARIFF NO. 2 FOR WESTBOUND CARGO

FROM PORTS WITHIN THE FRENCH/BELGIAN BOUNDARY LINE AND HAMBURG RANGE

The rates apply from f.o.b. ANTWERP/ROTTERDAM/AMSTERDAM, BREMEN/HAMBURG to NEW YORK, BOSTON, PHILADELPHIA, BALTIMORE, NORFOLK and/or NEWPORT NEWS at the Carrier's discharging piers. To other U. S. North Atlantic Ports between PORTLAND, MAINE and HAMPTON ROADS, both included, the rates are subject to special arrangements, but shall not be less than the rates specified in this Tariff.

Effective August 15, 1947.

[fol. 1856]

Contract and Non-Contract Rates

C—Contract N-C—Non-Contract A—Animals

	C	N-C	C	N-C	C	N-C
A.	0.175	0.30	8.25	10.25	16.50	20.—
A.	0.375	0.50	8.50	11.—	16.75	20.25
	0.40	0.60	9.—	11.50	17.—	20.50
	0.50	0.70	9.50	12.—	17.50	21.—
	0.60	0.75	10.—	12.50	18.—	22.—
A.	0.75	1.—	10.25	12.75	18.50	22.25
	0.80	1.—	10.50	13.—	19.—	23.—
	0.85	1.10	10.75	13.25	19.25	23.—
	0.90	1.15	11.—	13.50	19.50	23.50
	1.—	1.30	11.25	14.25	20.—	24.—
	1.10	1.40	11.50	14.50	20.25	24.50
	1.15	1.50	11.75	14.75	20.50	25.—
	1.50	1.70	12.—	15.—	21.—	25.—
	2.—	2.50	12.25	15.25	21.50	26.—
	2.30	2.80	12.50	15.50	22.00	26.50
	2.50	3.—	13.—	16.—	22.50	27.—
	2.60	3.20	13.25	16.25	23.—	28.—
	3.—	3.60	13.50	16.50	23.50	28.25
	3.10	3.80	13.75	16.75	23.75	28.50
	3.75	5.00	14.00	17.—	24.—	29.—
	4.50	5.50	14.25	17.25	24.50	29.50
	5.—	7.—	14.50	17.50	25.00	30.—
	6.—	8.—	15.—	18.—		
	6.50	8.50			25.50	31.—
	7.—	9.—	15.25	18.50	26.—	31.—
	7.25	9.25	15.50	19.—	26.25	31.50
	7.50	9.50	15.75	19.—	26.50	32.—
	8.—	10.—	16.—	19.25	27.—	32.50

[fol. 1857]

C—Contract

N-C—Non-Contract

C	N-C	C	N-C	C	N-C
27.50	33.—	40.50	49.—	54.50	65.50
28.—	34.—	41.—	49.—	55.—	66.—
28.50	34.—	41.50	50.—		
29.—	35.—	42.—	50.50	55.50	67.—
29.50	35.50	42.50	51.—	56.—	67.—
30.—	36.—	43.—	52.—	56.50	68.—
		43.50	52.—	57.—	68.50
30.50	37.—	44.—	53.—	57.50	69.—
31.—	37.—	44.50	53.50	58.—	70.—
31.50	38.—	45.—	54.—	58.50	70.—
32.—	38.50			59.—	71.—
32.50	39.—	45.50	55.—	59.50	71.50
33.—	40.—	46.—	55.—	60.—	72.—
33.50	40.—	46.50	56.—		
34.—	41.—	47.—	56.50	60.50	73.—
34.50	41.50	47.50	57.—	61.—	73.—
35.—	42.—	48.—	58.—	61.50	74.—
		48.50	58.—	62.—	74.50
35.50	43.—	49.—	59.—	62.50	75.—
36.—	43.—	49.50	59.50	63.—	76.—
36.50	44.—	50.—	60.—	63.50	76.—
36.75	44.—			64.—	77.—
37.—	44.50	50.50	61.—	64.50	77.50
37.50	45.—	51.—	61.—	65.—	78.—
38.—	46.—	51.50	62.—		
38.50	46.—	52.—	62.50	65.50	79.—
39.—	47.—	52.50	63.—	66.—	79.—
39.50	47.50	53.—	64.—	66.50	80.—
40.—	48.—	53.50	64.—	67.—	80.50
		54.—	65.—	67.50	81.50

[fol. 1858]

C—Contract

N-C—Non-Contract

C	N-C	C	N-C	C	N-C
68.—	82.—	81.—	97.—	170.—	204.—
68.50	82.—	85.—	102.—	180.—	216.—
69.—	83.—	87.50	105.—	190.—	228.—
70.—	84.—	88.—	106.—	200.—	240.—
		90.—	108.—		
71.—	85.—	95.—	114.—	210.—	252.—
72.—	86.—			220.—	264.—
73.—	88.—	100.—	120.—	230.—	276.—
74.—	89.—	110.—	132.—	240.—	288.—
75.—	90.—	120.—	144.—	250.—	300.—
76.—	81.—	150.—			
77.—	92.—	130.—	156.—	350.—	420.—
78.—	94.—	140.—	168.—	400.—	480.—
79.—	95.—	145.—	174.—	450.—	540.—
90.—	96.—	150.—	180.—	485.—	582.—
		160.—	192.—	500.—	600.—

COPY BOUND CLOSE IN CENTER

[fol. 1859] EXHIBITS 5 "A"-"D"

COPY

ISBRANDTSEN-MOLLER LINE

26 Broadway—New York

PHILADELPHIA-NEW YORK-ROTTERDAM

Agents:

VINKE & Co.

Independent Freight Service
From U. S. A.
To
HAVRE
ANTWERP
ROTTEDAM
Through Bills of Lading
To All Destinations

Address: 52-54, Leuehaven
Postbox: 1152
Telephone: 24880 (8 Lines)
Tel. Addr.: VINKECO-ROTTERDAM
Code: BOE, NEW BOE, LOMBARD, ETC.

ROTTERDAM, 17 January, 1939.

EXPORTS TO AND IMPORTS FROM THE U. S. A.

Gentlemen:

As your firm will no doubt appreciate to be kept fully informed on movements of a completely independent Steamship Line to the U. S. A., you will find below some additional information with regard to this Service:

RATES: The Isbrandtsen-Moller Line accepts at all times rates which are considerably lower than those of the Conference.

CONTRACT RATES: An extra reduction is offered by contract.

RUSH SHIPMENTS: In case you are of the opinion that the Isbrandtsen-Moller Line is not fast enough for your shipments, this Line is willing to include a special clause in the contracts, which will leave you free for "rush shipments".

SAILINGS: Sailings are made from Philadelphia and New York to Rotterdam, v.v. at regular intervals of approximately 12/14 days and a duration of approximately 13/14 days.

TONNAGE: The following vessels are at present in this Service:

M.S. "TONSBERGFJORD"
Year built 1930, speed approx. 12 knots
MS. "GUDRUN MAERSK"
Year built 1937, speed approx. 12 knots.
M.S. "RAGNHILD"
Year built 1938, speed approx. 12 knots

BERTH AT ROTTERDAM: This is located at the Right Bank of the Meuse River, which in general means a considerable saving in transport costs to importers and exporters.

For shipments needing special care, it is possible in many cases that when the booking is made that it will be agreed that they will be discharged through the roof of the shed.

SPECIAL CARGO: For special cargo, the Isbrandtsen-Moller Line offers you stowage in special Lockers of the vessel.
[fol. 1860] CLAIM SETTLEMENTS: Little is to be said about this since damage seldom occurs.

PERSONAL CONTACTS: As Agents for this Line, we are at all times prepared for a personal interview in order to discuss with you your special requirements for merchandise and in order to meet your wishes as much as possible.

Expressing the hope that also during this year the Isbrandtsen-Moller Line may count on your support, we remain,

Respectfully,

VINKE & Co.

COPY BOUND CLOSE IN CENTER

[fol. 1861] *COPY*

ISBRANDTSEN-MOLLER LINE

26 Broadway—New York

PHILADELPHIA-NEW YORK-ROTTERDAM

Agents:

VINKE & Co.

Independent Freight Service
From U. S. A.
To
HAVRE
ANTWERP
ROTTEDAM
Through Bills of Lading
To All Destinations

Address: 52-54, Leuehaven
Postbox: 1152
Telephone: 24880 (8 Lines)
Tel. Addr.: VINKECO-ROTTERDAM
Code: BOE, NEW BOE, LOMBARD, ETC.

ROTTERDAM, 14 March, 1939.

ROTTERDAM/NEW YORK-PHILADELPHIA-BALTIMORE

COMPETITIVE FREIGHT RATES

Gentlemen:

The A Class S.S. "NOREFJORD", ready to load March 16/17, unforseen circumstances excepted, is available for cargo to the above mentioned ports.

In case you have cargo to be booked for this sailing, you will be in a position to take advantage of the lower freight rates which are offered you again by this Non-Conference sailing.

Inasmuch as the quantity of cargo moving with the Isbrandtsen-Moller-Line is steadily increasing, we request you to book your shipments, if feasible, as soon as possible so that the required space can be reserved for you in advance.

Looking forward to receiving your shipping instructions, we remain

Respectfully,

VINKE & Co.

[fol. 1862] *COPY*

ISBRANDTSEN-MOLLER LINE

26 Broadway—New York

PHILADELPHIA-NEW YORK-ROTTERDAM

Agents:

VINKE & Co.

Independent Freight Service
From U. S. A.
To
HAVRE
ANTWERP
ROTTEDAM
Through Bills of Lading
To All Destinations

Address: 52-54, Leuehaven
Postbox: 1152
Telephone: 24880 (8 Lines)
Tel. Addr.: VINKECO-ROTTERDAM
Code: BOE, NEW BOE, LOMBARD, ETC.

ROTTERDAM, 8 May, 1939.

COMPETITIVE FREIGHT RATES
ROTTERDAM-NEW YORK/PHILADELPHIA v.v.

Gentlemen:

We herewith take the liberty to call your special attention once more to the non-Conference Service of the firm Isbrandtsen-Moller Company, Inc., New York, of which we are representatives.

No doubt, your interests will profit when your shipments move under competitive freight figures and in an efficient way.

The Isbrandtsen-Moller Line offers you these advantages for your exports as well as for your imports from North America.

In case you are willing to conclude a contract with our principals for all your shipments, we will, in very many cases, be in a position to offer you an even more attractive freight figure.

We, therefore, trust that for your future shipments you will make use of the regular 14 day service of the Isbrandtsen-Moller Line and we are looking forward to hearing from you in this respect.

Respe[illegible]lly,

VINKE & Co.

COPY BOUND CLOSE IN CENTER

[fols. 1863-1868] *COPY*

ISBRANDTSEN-MOLLER LINE

26 Broadway—New York

PHILADELPHIA-NEW YORK-ROTTERDAM

Agents:

VINKE & Co.

Independent Freight Service
From U. S. A.
To
HAVRE
ANTWERP
ROTTEDAM
Through Bills of Lading
To All Destinations

Address: 52-54, Leuchaven
Postbox: 1152
Telephone: 24880 (8 Lines)
Telephone: VINKECO-ROTTERDAM
Tel. Addr.: BOE, NEW BOE,
Code: LOMBARD, ETC.

ROTTERDAM, 18 July, 1939.

ROTTERDAM/NEW YORK-PHILADELPHIA

COMPETITIVE FREIGHT RATES

Gentlemen:

Although you are, no doubt, familiar with the fact that for already many years the Service of the firm Isbrandtsen-Moller Co., Inc., New York, of which we are representatives, has regular sailings about every 12 to 14 days, we nevertheless take the liberty to call your special attention to this Line once more.

Your interests are, no doubt, served when you can book your shipments in a cheaper way. You can accomplish this through the lower freight rates which we offer you.

An extra rate reduction is offered to you by a contract and we will be pleased to hear from you whether you are willing to conclude a contract with our principals for all your shipments.

For your information, we herewith quote the nearby sailings:

MS. "TONSBERGFJORD"
Unforseen circumstances excepted 29 July

MS. "RAGNHILD"
Unforeseen circumstances excepted 10 August

MS. "HELVIG"
Unforseen circumstances excepted 24 August

We hope that you will be able to make use of this regular service for your future shipments, and your inquiries for freight rates will receive our prompt attention.

We will be pleased to hear from you in case it is possible to have an interview with you, so that we will have an opportunity to give you any further particulars which you may desire.

Looking forward to hearing from you with much interest, we remain,

Respectfully,

VINKE & Co.

[fol. 1869] EXHIBIT "6"

K. L. COYTE, President — D. E. COYTE, Vice President
Cable

"COTTON LOUISVILLE" — HAIL AND COTTON
Arnold's Code No. 5 — LEAF TOBACCO DEALERS
A.B.C. 5th Edition Improved — All Grades
Bentley's

211-213 S. Seventh St.

LOUISVILLE 2, KY. October 25, 1948
RECEIVED OCT 27 1948 MSC.

The ISBRANDTSEN COMPANY, INC.,
New York, N. Y.

Gentlemen:

We wish to acknowledge your wire of October 23rd confirming the information that we had received that the Transatlantic Conference would soon reduce their Ocean Freight rates and then force a signing of their Conference Contract, in order to ship at the low rate on their steamers.

There is no question that such a Contract is a monopolistic practice as we see it and also we are very appreciative of your efforts to operate as an independent line, which has been the prime factor in forcing the Conference to lower their rate on Tobacco.

COPY BOUND CLOSE IN CENTER

Although we are absolutely against anything that might work against freedom of action, which signing a Conference-contract entails, still we do not know how we can afford not to do this as in our shipments we do have need to use said Conference Lines to insure the regular sailings that we must have in order to comply with our customers' instructions as to their shipments.

It is a situation, in which we are not pleased but rather definitely opposed. We are giving the matter every consideration to see if we could afford to not sign such a contract and still be able to give the service that our customers demand. Frankly we do not see how it is possible.

Morally we are most definitely with you but physically we do not know whether we can possibly avoid signing such a contract if it is presented to us as above all we must protect our customers' instructions in using Conference service, which has heretofore been necessary to do. However we will take it under serious consideration before so signing and would like to know HOW we could avoid such contract signing.

With our very best wishes, we remain,

Yours very truly,

DEC/V /s/ Hail & Cotton, Inc.

[fol. 1870] Exhibit "7"

Boler Petroleum Company

Petroleum and Its Products
Widener Building

Philadelphia 7, Pa., U. S. A.

October 27, 1948.

Isbrandtsen Company, Inc.
26 Broadway, New York 4, N. Y.

Attention: Mr. M. S. Crinkley, Vice President
Steamship Division

Gentlemen:

We still have to acknowledge receipt of your letter of October 15 regarding bookings with your line. Since talk-

ing with your representatives we found ourselves obliged to sign contract with conference. You can rest assured however that we will make use of your line if our customers from the other side request us to do so.

Yours very truly, Boler Petroleum Company, H. C. Saalenbach, Secretary.

HCS/rm

[fol. 1871] EXHIBIT "8"

LOUIS MARX & COMPANY

Manufacturers of Mechanical Toys - Steel Toys - Trains
Home Office 200 Fifth Avenue, New York 10, N. Y.

October 28, 1948.

Isbrandtsen Company, Inc.
26 Broadway, New York 4, N. Y.

Att: M. S. Crinkley

Gentlemen:

We are on your mailing list for your various circular letters, contents of which are rather interesting. On October 20th, you have sent us a circular with the heading "Why Sign Conference Contracts Covering Shipments to Europe?"

We believe that you are absolutely correct in your attitude and as far as we are concerned we agree with what you say, but the practical facts of the matter are, we have shipments to England, or we expect to have them, furthermore we are receiving shipments from Germany.

Our brokers in European ports have informed us that in case we would not be signers of the Conference Contract we would have to pay a higher rate of freight. As the boats of the conference members comprise nearly all of the boats running, we do not see very much chance of avoiding the signing of the Conference Contract, if we do not want to pay a higher freight rate, which we certainly do not want to do, or to have serious delays in our shipments.

We are not importers or exporters on a very large scale so more or less this question, which is very important to

COPY BOUND CLOSE IN CENTER

you, is for us of a principle or a theoretical nature, but we thought we would give you the facts, seen from the point of view of the man who has the choice of getting lower rates if he signs the contract, or being punished by higher rates if he sticks to a "policy."

Very truly yours, Louis Marx & Company, Eric F. C. Helmich, Export Manager.

EFCH/bl

WORLD'S LARGEST MANUFACTURERS OF TOYS

[fol. 1872] EXHIBIT "9"

ISBRANDTSEN-MOLLER LINE

AGREEMENT

To-day the following agreement has been made between Messrs. STOFZUIGER CENTRALE P. ELZERMAN, Lange Houtstraat 14, The Hague, and Messrs. VINKE & Co., Rotterdam, as agents for Messrs. ISBRANDTSEN-MOLLER Co. Inc., New-York:

Messrs. Stofzuiger Centrale P. Elzerman agree to ship all their parcels of vacuum cleaners and washing machines from New York and Philadelphia to Rotterdam by vessels running in the Line of Messrs. Isbrandtsen-Moller Co. Inc., during the year 1937.

The rates of freight amount to:

Vacuum cleaners, household attachments and parts	30c (thirty dollarcents) per cubicfoot, less 15% (fifteen percent).
Washing machines	85c (eighty-five dollarcents) per hundred lbs., less 15% (fifteen percent).

In case other lines between New York and Philadelphia to Rotterdam reduce their freight rates on the within mentioned commodities below the freight rates herein agreed, Messrs. Isbrandtsen-Moller Co. Inc. will either meet or re-

lease Messrs. Stofzuiger Centrale P. Elzerman from this contract.

All conditions of the Bills of Lading as in use by the Isbrandtsen-Moller Line, are considered to be incorporated in this agreement.

Rotterdam, November 17th 1936.

For the Isbrandtsen-Moller Line

As Agents.

[fol. 1873] EXHIBIT "10"

UNITED STATES MARITIME COMMISSION

Washington 25, D. C.

August 30, 1948.

North Atlantic Continental Freight Conference
Mr. C. R. Andrews, Chairman
80 Broad Street
New York 4, New York

Gentlemen:

Reference is made to your letter of August 4, 1948, enclosing copies of temporary contract forms on Tin Plate or Terne Plate, Tires and Tubes and Tobacco, in reply to ours of August 3rd.

We note your statements that the adoption of contracts was only for particular commodities and does not take in the whole tariff in its entirety, and further the so-called temporary contracts on Tin Plate or Terne Plate, Tires and Tubes and unmanufactured Tobacco, will be replaced by usual form of contract, if, and when reinstituted.

A perusal of the forms submitted reveals the following:

1. They cover all shipments on and after August 1 through December 31, 1948, *and thereafter for consecutive subsequent years, subject to cancellation on 90 days notice, as of December 31 in any year.*
2. The commodities and rates are shown on the reverse side. The contract rates have been published on Tires and Tubes, but no contract rates have yet been estab-

COPY BOUND CLOSE IN CENTER

lished on the rubber goods items also shown on the reverse side with Tires and Tubes.

3. The form states that it also covers other commodities as may be shipped by the Merchant from time to time, which shall be deemed covered by this agreement, etc.
4. The temporary contracts state that a more formal agreement on the customary form will be sent in due time, yet the statement in your letter that they will be replaced by the usual contract forms, if and when reinstituted, creates a doubt that the usual contract form will be reinstituted.

From the foregoing it appears:

1. The contracts are not temporary contracts but are automatically continued in effect until cancelled.
[fol. 1874] 2. The present contract form may, or may not, be replaced by a more complete form.
3. The contract although specifying a particular commodity, covers all commodities shipped by the shipper regardless of whether or not contract rates have been established.

It is requested that the conference give consideration to the matters outlined above for the purpose of taking clarifying and corrective action.

Of special concern is the fact that the contract form covers not only the particular commodities named in the contract and on which contract rates have been established but all shipments of merchants,—even those for which no contract rates have as yet been established. The contract, on tires, and tubes emphasizes this. These forms list, in addition to tires and tubes, other rubber goods which would be covered by the contract but the rates are the regular tariff or non-contract rates (no contract rates having been established). However, a shipper of these other goods who was not a shipper of tires and tubes and therefore not a signer of the contract would be free to ship with the conference or outside the conference as he chose but his conference shipments would be rated exactly the same as those of a contract shipper who would not have this same freedom of routing. It would appear that there might be some basis

for alleging that such a situation would result in unjust discrimination.

Unless contract rates are established with respect to all commodities we do not believe that the contract should bind the shipper as to all commodities but instead should be limited to those commodities on which contract rates apply.

Very truly yours, L. Tibbott, Assistant to Chief, Office of Regulation.

[fol. 1875] EXHIBIT "11"

ISBRANDTSEN-MOLLER COMPANY, INC.

World Wide Carriers of Freight

Regular Sailings—Japan, China, Philippines, Europe and West Indies

26 Broadway, New York

Telephone WHitehall 4-2126

December 19, 1935.

Anaconda Wire & Cable Company,

American Brass and/or their subsidiary companies, New York City.

Gentlemen:

We confirm the arrangement agreed upon covering the movement of brass and copper products to the Far East, for shipment during the period from January 1st, 1936 to December 31st, 1936. The commodities and rates to which this agreement applies are:

Commodities:

Copper, Brass and Bronze sheets, wire, rods, tubes, pipe and plates
Copper Wire, bare or insulated
Copper Cable, bare, insulated or lead covered

from New York/Philadelphia/Baltimore/Hampton Roads to Yokohama, Kobe, Osaka, Hongkong and Manila, $8.00

COPY BOUND CLOSE IN CENTER

per 2,000# or 40 cu. ft. ship's option. To Shanghai add 50c, and to Cebu and Iloilo, add $2.00 to above rate.

The shipper shall have the option of selecting any of the vessels operated by the Isbrandtsen-Moller Company, Inc., subject to specific agreement between the carrier and shipper as to quantities to be shipped on the carrying vessel, and the port or ports of loading, call and discharge.

Should the Isbrandtsen-Moller Co., Inc. during the term of this agreement reduce rates on any of the commodities named, the Shipper shall be given the full benefit of such reduced rates during the period same remain in effect.

Arrangement for the actual carriage of specific shipments of the commodities covered by this agreement is to be made individually with us, and the shipments shall be subject to all the terms, conditions and exceptions expressed in the permits, dock receipts, mate's receipts and regular form of bill of lading of the Isbrandtsen-Moller Co., Inc., at the time of the shipments.

This agreement is sent to you in triplicate. Please sign all copies, retaining one for your files and returning one to the Dyson Shipping Company, Inc., and one to this office.

Yours very truly, Isbrandtsen-Moller Company, Inc.

—— ——.

HCM:JL

Accepted: —— ——, Jany. 4/36.

[fol. 1876] EXHIBIT "12A"

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE

80 Broad Street, New York 4, N. Y.

List of 581 Commodities on Which the Rates of Isbrandtsen Co., Inc., Are Lower Than the Rates of North Atlantic Continental Freight Conference Lines

Attached schedule, Pages 1 thru 23, contains rates to ports in Belgium, Holland and Germany as appear in following tariffs on file with the United States Maritime Commission:

> North Atlantic Continental Freight Conference Tariff No. 18, issued July 31, 1946, effective July 1, 1946, as amended by Corrections No. 1 thru No. 648 issued April 28, 1949.
>
> The Isbrandtsen Company, Inc., North Atlantic Continental Freight Tariff No. 2, effective August 1, 1946, as amended by Corrections No. 1 thru 747 issued April 18, 1949.

and lists 581 separate commodities on which the rates of Isbrandtsen are from 3.3% to 53.4% lower than the rates of North Atlantic Continental Freight Conference Lines. In this connection, see attached chart, Pages 24 and 25 to determine the difference in percentage rates of Isbrandtsen are lower than the rates of North Atlantic Continental Freight Conference Lines.

It will be noted that the attached schedule comprise substantially the principal commodities moving in volume to Belgium, Holland and Germany.

A comparison has also been made of the rates and classifications in Isbrandtsen Company, Inc., North Atlantic Continental Freight Tariff No. 2, effective August 1, 1946 with the rates and classifications in North Atlantic Continental Freight Conference Lines Tariff No. 18, effective July 1, 1946, and it clearly and definitely shows that rates and classifications in Isbrandtsen Tariff No. 2 were copied *Word for Word* from North Atlantic Continental Freight

COPY BOUND CLOSE IN CENTER

Conference Lines Tariff No. 18, effective July 1, 1946. In fact, Isbrandtsen substantially copied the title of the Conference Tariff No. 18, viz:

Conference Tariff Title—North Atlantic Continental Tariff No. 18.

Isbrandtsen Tariff Title—North Atlantic Continental Freight Tariff No. 2.

Further when Conference Lines adopted several odd tariff page numbers, such as 23A, Isbrandtsen subsequently adopted the same odd tariff page numbers, viz:

Conference Tariff No. 18			Isbrandtsen Tariff No. 2		
Page No.	Correction No.	Date Issued	Page No.	Correction No.	Date Issued
23A	605	Mar. 10, 1949	23A	745	April 18, 1949
58A	72	Dec. 12, 1946	58A	94	Jan. 13, 1947
72A	505	Oct. 18, 1948	72A	705	Mar. 25, 1949

The rates and classifications in Conference Lines Tariffs were compiled by the Conference Office as a result of many years (More than 25 years) of investigation, study, research work, collaboration with shippers, importers, etc. The above facts again clearly and definitely demonstrate that Isbrandtsen in copying the Conference Lines' tariff rates and classifications (Isbrandtsen also copied Conference tariff rules in many cases) was one of expediency.

[fol. 1877] As shown in the rate comparison captioned "COMPARISON OF CONFERENCE AND ISBRANDTSEN-MOLLER COMPANY, INC., RATES FROM NOVEMBER 6, 1939 to April 30, 1940 to ANTWERP-ROTTERDAM-AMSTERDAM," the general pattern or rate basis used by Isbrandtsen from November 6, 1939 to April 30, 1940 was Conference Lines' rates, less 10% even to one-half (½) cent figures. And when Isbrandtsen filed rates with the United States Maritime Commission effective from August 1, 1946, Isbrandtsen adopted IN TOTAL all of the Conference Lines' tariff rates and classifications. To show what little attention Isbrandtsen paid to their tariff classifications and how closely ISBRANDTSEN copied the Conference rates and classifications, we list below several printing inaccuracies which first appeared in the Conference Lines' Tariff No. 18 and

which Isbrandtsen subsequently copied in their Tariff No. 2:

ORIGINAL TARIFF PAGE 74 IN BOTH TARIFFS:

Conference omitted a bracket "(" in front of the word "Moth" in their tariff item "*Paper Bags (moth).*" Isbrandtsen also omitted the same bracket in their tariff.

ORIGINAL TARIFF PAGE 79 IN BOTH TARIFFS

Conference misspelled the word "unshelled" as unshalled in their tariff item "*Pecans, unshelled.*" Isbrandtsen also copied the misspelling in their tariff.

ORIGINAL TARIFF PAGE 118 IN BOTH TARIFFS

Conference omitted the word "ton" in their tariff item "*Wire Coppered Steel*" Isbrandtsen also omitted the word "ton" in their tariff.

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All Rates in Cents per 100 Lbs., unless otherwise stated

Following is a list of rates—Conference Tariff No. 18 versus Isbrandtsen Company, Inc., Tariff No. 2.

Conference Tariff Page	Commodity	Antwerp Rotterdam Amsterdam		Hamburg Bremen Bremerhaven	
		Conference	Isbrandtsen	Conference	Isbrandtsen
1.	Abrasives, Grain, in bags	$.90	$.85	$1.00	$.95
	Abrasives, Grain, in kegs	1.05	.95	1.15	1.05
	Abrasives, Ore, Crude, in bulk	14.50 ton	14.00	16.00 ton	15.50
	Accelerator, Rubber, in cases & drums, fibre or steel (Freight to be not more than if General Cargo Measurement Rates applied)	3.45	.70/2.50	3.80	.80/2.75
	Acetates:				
	Amyl, Butyl	1.75	1.50	1.95	1.60
	Methyl	1.75	1.60	1.95	1.75
	Acetone (Caution)	1.75	1.15	1.95	1.40
	Acid (s), viz:				
	Acetic (Caution)	1.30	1.15	1.45	1.30
	Chromic (Caution)	.85/1.50	.75/1.40	.95/1.70	.85/1.55
1A	Fatty, Animal, Fish or Vegetable, Inedible: Not Hydrogenated, in barrels or drums	17.25 ton	15.00	19.00 ton	16.50
	Phosphoric	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Salicylic, in wooden barrels or steel drums	.85/1.50	.55/1.00	.95/1.70	.65/1.10
	Tannic (Tannin)	.50 ft	.45	.55 ft.	.50
2.	Agricultural Implements, Agricultural Machinery & Parts, etc.	—	—	For Relief 15.25 T WM	12.35
3.	Airplanes & Parts—Complete Unit, Packed	20.75 W/M	18.75	22.25 W/M	20.00
	Parts, Packed, N.O.S.	30.00 W/M	27.00	—	—
	Alcohols, Butyl, Methyl	1.75	1.60	1.95	1.75
4.	Aluminum, viz:				
	Bars	1.60	1.40	1.75	1.55
	Ingots, in bundles (Pieces 44 lbs. or over may be loose)	16.00 Ton	13.00	17.50 Ton	15.50
	Ingots, Alloy, in bundles (Pieces 44 lbs. or over may be loose)	16.00 Ton	13.00	17.50 Ton	15.50
	Sheets or Strip (Not Foil, which see)	23.00 Ton	21.00	25.25 Ton	23.00
	Sheets, Corrugated	25.00 Ton	23.00	27.50 Ton	25.25
	Sulphate (Ammonium-Potassium-Sodium)	15.50 Ton	15.00	—	—
	Amblygonite, in bags	14.75 Ton	14.00	16.25 Ton	15.00
	Ammonium Chloride (Sal Ammoniac), in bags or barrels	—	—	1.10	1.00
	Ampoules or Shell Vials, Glass	.85/1.50	.60/1.10	.95/1.70	.65/1.20

North Atlantic Continental Freight Conference

All Rates in Cents per 100 lbs., unless otherwise states

Conference Tariff Page	Commodity	Antwerp Rotterdam Amsterdam		Hamburg Bremen Bremerhaven	
		Conference	Isbrandtsen	Conference	Isbrandtsen
5.	Apples and Pears—Ordinary Stowage:				
	In wooden boxes, not exceeding 2' or "Approved Eastern Apple Box" (Strapped or Wired or Rule 21)	$.80 Ea.	$.70	$.90 Ea.	$.75
6.	Arsenic, in hermetically sealed iron drums or barrels (Caution)	1.15	1.00	1.25	1.10
	Asbestos, viz:				
	Crude	1.07½	1.25	1.17½	1.40
	Fibre, N.O.S.	.72½	.90	.80	.95
	Fibre, Spinning	.97½	1.15	1.07½	1.25
	Refuse or Shorts (Grading not over 0-0-5-11)	.67½	.75	.75	.80
	Waste (Grading over 0-0-5-11 but not over 0-0-8-8)	.62½	.80	.67½	.90
	Asphalt and Asphaltum, in satisfactory containers	17.25 Ton	15.00	19.00	17.00
7.	Automobile Accessories, etc.	.85/1.50	.75/1.35	.95/1.70	.85/1.50
8.	Motor Vehicles, Etc., Road:				
	Packed Rate Schedule				
	Automobiles, Bodies, Busses, Chassis, Trucks, Trailers (Not Tractors or Platform or Warehouse Trucks or Trailers), assembly and replacement parts:				
	In packages not exceeding 6720 lbs.	.45/80	.40/75	.50/90	.45/80
	For Relief only	.45/80	.35/65	.50/90	.40/70
	In packages 6721 to 8000 lbs.	.50/90	.45/80	.55/1.00	.50/90
	Unpacked Rate Schedule				
	Unpacked Automobiles, Chassis, Trucks (Not Warehouse or Platform Trucks), Speed Wagons, Light Delivery Trucks or Vans, Ambulances, Fire and Police Department Vehicles, Truck Power Units, Trailers, (Not Warehouse or Platform Trailers), Dump Body Units, Tank Trucks, and other such special road transportation equipment N.O.S.—Freight to be assessed on Overall Measurement less bumpers:				
	Not exceeding 6720 lbs.	.70/1.25	.60/1.10	.75/1.35	.65/1.15
	For Relief Only	.70/1.25	.55/1.00	.75/1.35	.60/1.10
	Weighing 6721 to 8000 lbs.	.75/1.35	.65/1.15	.85/1.50	.75/1.35
	Weighing 8001 to 8960 lbs.	.79/1.41	.75/1.35	.85/1.50	.80/1.40

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North Atlantic Continental Freight Conference

All Rates in cents per 100 lbs. unless otherwise stated

Conference Tariff Page	A. R. A. Conference	A. R. A. Isbrandtsen	H/B Conference	H/B Isbrandtsen
9. Bags, Burlap, New Lined or unlined, in compressed bales	$1.75	$1.40	$1.95	$1.55
Bags, Second Hand, in compressed bales:				
Measuring up to and including 110 ft. per 2240 lbs.	1.45	1.30	1.60	1.40
Measuring over 110 ft. and including 140' per 2240 lbs.	1.75	1.50	1.95	1.70
Measuring over 140 ft. per 2240 lbs.	2.00	1.75	2.20	1.90
Balata	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Barium Chloride, in bags, bbls. or drums	21.00	ton 19.00	23.00	ton 21.00
Barks, Herbs, Leaves, Roots & Stems, NOT otherwise specified:				
Conf. Actual value up to but NOT including 20¢ per lb. / Isb. Actual value up to but NOT including 30¢ per lb.	2.40	2.40	2.65	2.65
Conf. Actual value 20¢ per lb. and over / Isb. Actual value 30¢ per lb. and over	.85/1.50	.85/1.50	.95/1.70	.95/1.70
10. Barytes	16.50 T.W/M	15.00 Wt.T.	18.25 T.W/M	18.25 Wt.T.
Beans, Peas, Lentils (For Relief)	.90	.70	1.00	.80
Beans, Soya, in bags or bbls.	.90	.80	1.00	.90
Bearings, Ball, N. O. S.	1.55	1.40	1.70	1.55
Bearings, Roller, Industrial	.85/1.50	.75/1.35	.95/1.70	.85/1.50
11. Bedsteads, Springs and Mattresses	.50/90	.45/80	.55/1.00	.45/80
For Relief		.41/72		.45/80
Beer, in cases	1.15	1.00	1.25	1.10
Belting, Leather	1.30/2.30	1.00/1.80	1.45/2.60	1.10/2.00
Bicycles, Tricycles, Velocipedes & Parts, Except Bearings, Ball	.50/90	.50/90	.55/1.00	.55/1.00
(For Relief only)		.41/72		.45/80
12. Biologicals, Ordinary Stowage, (Minimum Charge on any Bill of Lading $10.00) (Isbrandtsen $25.00 Min. chge.)	1.75	1.75	1.95	1.95
Bladders, Dry	3.10	2.80	3.40	3.10
Blocks, Magnesia	1.75	1.60	1.95	1.75
13. Boards, Wall, Plaster Board and/or Insulating Board (NOT Black or Green Coated):				
Measuring 75 cu. ft. or under per 2240 lbs.	1.25	1.10	1.40	1.25
Measuring over 75 cu. ft. per ton	1.45	1.30	1.60	1.45

All Rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Page		Antwerp Rotterdam Amsterdam		Hamburg Bremen Bremerhaven	
		Conference	Isbrandtsen	Conference	Isbrandtsen
14.	Boats, Motor, mounted on Trailers—Apply Boats Motor Rate.				
	Boats, Row, Launches, Motorboats and Power Driven Yachts (NOT incl. sail boats or yachts using sail as principal means of propulsion): 30 feet or less in length and 6,000 lbs. or less in weight	$.45	$.40	$.50	$.45
	Boots and Shoes, Leather	.85/1.50	.70/1.30	.95/1.70	.75/1.35
	Borax, Refined	1.05	.85	1.15	1.15
	Bottles, Common Glass, Empty (NOT Water Coolers)	1.20	.95	1.30	1.05
15.	Boxes, Battery, Empty, with or without Wooden Separators or Covers	.45 ft	*.50/90 .40	.50 ft	*.55/1.00 .45
	Brake Lining, or Clutch Facing, N. O. S.	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Brass Bars and Billets, Pieces over 50 lbs. may be loose	16.50 Ton	15.00	18.25 Ton	16.50
	Brass Discs, in cases	13.75 Ton	12.50	15.25 Ton	13.75
	Brass Dross	13.75 Ton	12.50	15.25 Ton	13.75
	Brass Ingots, Pieces over 50 lbs. may be loose	13.75 Ton	12.50	15.25 Ton	13.75
	Brass Rods, in bundles or coils	16.50 Ton	15.00	18.25 Ton	16.50
	Brass Rods, Loose, 100 lbs. each or over	15.50 Ton	15.00	18.25 Ton	16.50
	Brass Sheets	27.50 Ton	20.00	30.25 Ton	22.00
	Brass Strip—Apply Brass Sheets Rate	27.50 Ton	20.00	30.25 Ton	22.00
	Brass Tubing	1.75	1.55	1.95	1.70
16.	Brick, Fire, including Magnesite and Fire Brick Shapes (Furnace Linings), packed or skidded, Shipper to furnish skids	13.75 Ton	12.00	15.25 Ton	13.50
	Bristles	1.30 ft.	1.00	1.45 ft.	1.15
	Brushes and Sample Brushes	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	For Relief		.65/1.20		.75/1.35
	Bulbs, Electrical	.85/1.50	.65/1.30	.95/1.70	.75/1.40
	Bulbs or Tubing, Empty Glass Lamp or Radio, without Metal Attachments, Trimmings or fittings	.45 ft.	.45	.50	.45
	Burlap	2.30	2.00	2.55	2.25

* Battery Boxes, Empty.

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North Atlantic Continental Freight Conference

All Rates in Cents per 100 lbs., unless otherwise stated

Conference Tariff Page	Commodity	Antwerp Rotterdam Amsterdam Conference	Antwerp Rotterdam Amsterdam Isbrandtsen	Hamburg Bremen Bremerhaven Conference	Hamburg Bremen Bremerhaven Isbrandtsen
17.	Butter, Cocoa (Excluding Toilet Preparations) in bags and cases	$1.75	$1.30	$1.95	$1.50
	Butter In Ordinary Stowage (Also See Refrigerator List)	1.75	1.60	1.95	1.75
	Buttons	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Cable, Electric, Insulated new	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Cadmium Metal, in cases, barrels or drums	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Calcium Viz:				
	Carbide, in sealed drums (Caution)	1.40	2.00	1.55	2.20
	Silicate, Hydrated (Silence EF) in bags	1.75	1.50	1.95	1.75
18.	Cambric, Varnished	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Camphor, Artificial, Synthetic or Natural	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	Canned Goods, consisting of Fruits, Soups, Vegetables, N.O.S. (Not Canned Meats, Crabmeat, Grapefruit, Lobster, Shrimp, Honey, Syrup, etc., in cases, (If wooden, Must be strapped or wired)	1.00	.80	.110	.90
	Canned Goods, (Not Canned Meat, Fish) For Relief Strapped		.80		.90
	Not Strapped		.90		1.00
	Cans, Empty, N.O.S.	.45 ft.	.40	.50 ft.	.45
	Carbon, Tetrachloride, in steel drums, on or under deck	1.20	1.00	1.30	1.10
19.	Cartridges, Safety (Ammunition, Small Arms)	3.05	2.75	3.35	3.05
	Casein	1.55	1.35	1.70	1.50
	Casings Dry or Artificial	.85/1.50	.50/.90	.95/1.70	.55/1.00
	Casters and Caster Assemblies, in barrels or cases	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Cellosolves, in steel drums (Caution)	1.75	1.60	1.95	1.80
	Cellulose Acetate, packed or in packages, iron banded on pallets	.50/1.40	.45/1.20	.55/1.55	.50/1.30
20.	Cement, Magnesia	1.40	1.25	1.55	1.40
	Cereals: (Apply 5¢ 100 lbs. over case rates on the following Items when shipped in barrels)				
	Group I: Cream of Wheat, Farina, Flaked Oatmeal, Grape Nuts, Grits (Made of Buckwheat), Grits, Corn or Rice, Hominy, Pettijohns, Post Wheat Meal, Post-o, Postum Red River Cereal, Roman Meal, Sunera, Wheatena, Whole Wheat Cereal, Ralston Relief Cereal:				
	In bags (&* Kegs), cartons and cases	1.40	1.25	1.55	1.40

* Isbrandtsen Classification Includes Kegs.

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North Atlantic Continental Freight Conference

6.

All Rates in Cents per 100 lbs., unless otherwise stated

Conference Tariff Page	Commodity	Antwerp Rotterdam Amsterdam		Hamburg Bremen Bremerhaven	
20. (Cont'd)		Conference	Isbrandtsen	Conference	Isbrandtsen
	Cereals:				
	Group 2: Bran Flakes, Cereal Meal, Corn Flakes, Force, Krumbled Bran, Krumbles, Muffets, Pablum, Post Toasties, Puffed Rice, Puffed Wheat, Ry-Krisp (Not Bread), Shredded Wheat, Triscuit, Wheaties, Whole Bran, Whole Wheat Flakes:				
	In bags (kegs*) cartons or cases	$2.90	$2.50	$3.20	$2.60
	Oats, Rolled, in bags	1.10	.90	1.20	1.00
	Cerium Metals (Minimum Charge per Package)	25.00	12.50	—	—
	Cheese, in Ordinary Stowage	1.05	.85	1.15	.95
	Chewing Gum	.65/1.15	.60/1.05	.70/1.25	.65/1.15
	Cigarettes	.60 ft.	.50 ft.	.65	.55
	Clay, Ground, Fire Clay, Fullers Earth, Crude Talc (Not Talcum Powder) in bags or barrels	.80	.75	.90	.85
	Pigeons (Targets or Traps)	2.50	2.25	2.75	2.30
	Cleaners, Vacuum (Household), Attachments and Parts	.70 ft.	.60	.75 ft.	.65

* Isbrandtsen Classification Includes Kegs.

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All Rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Page	Commodity	Antwerp Rotterdam Amsterdam		Hamburg Bremen Bremerhaven	
		Conference	Isbrandtsen	Conference	Isbrandtsen
23.	Clothing, N. O. S.	$1.00 ft.	$.90	$1.10 ft.	$1.00
	Clothing, Rubber	1.00 ft.	.90	1.10 ft.	1.00
	Cocoa Beans, in bags	1.45	1.30	1.60	1.45
	Cocoa Powder, in barrels	1.75	1.35	1.95	1.40
	Coffee, Concentrated Soluble	.85/1.50	.60/1.10	.95/1.70	.65/1.20
	Coffee, Green in bags or cases	1.45	1.35	1.60	1.50
	For Relief		1.10		1.25
	Coffee, Roasted in bags	1.65	1.65	1.80	1.85
	Coffee, Roasted in cases, strapped or wired	1.55	1.40	1.70	1.60
	For Relief		1.25		1.35
	Coffee, Roasted in cases, NOT strapped or wired	1.65	1.50	1.80	1.70
	For Relief		1.30		1.45
23A.	Coke, Petroleum, in bags	25.00 Ton	22.50	27.50 Ton	25.00
	Colors, Dry Paint Chemical, N. O. S.	.85/1.50	.65/1.20	.95/1.70	.75/1.35
24.	Compound Metal Cutting or Drilling—Apply Oil, Lubricating Mineral Rates	4.05 bbl.	.60/1.00	4.45 bbl.	.65/1.15
	Compound Rust Preventive—Apply Oil, Lubricating Mineral Rate	4.05 bbl.	1.90	4.45 bbl.	2.10
	Confectionery, Ordinary Stowage	1.75	1.60	1.95	1.75
	Cookers, Pressure, Household Packed	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Cooperage Stock, in bundles	1.15	1.05	1.25	1.15
25.	Copper (Pieces over 50 lbs. may be loose): Bars, Billets, Cathodes, Ingot Bars or Notched Bars, Ingots, Matte, Pigs or Wire Bars, Slabs	11.50 Ton	10.00	12.75 Ton	11.25
	Copper Sheet	24.25 Ton	22.00	26.75 Ton	24.00
	Copper Wire, Bare in coils	13.75 Ton	10.00	15.25 Ton	11.25
	Copper Wire Rods, in coils	11.50 Ton	10.00	12.75 Ton	11.25
	Cord, Cotton, in cases	.85/1.50	1.55	.95/1.70	1.70
	Cordage, N. O. S.	1.75		1.95	
	For Relief		1.41		1.57
26.	Cork Discs, Rods or Shapes, Packed	4.00	3.50	4.40	3.90
	Cotton and Cotton Linters:				
	High Density Compression	1.75	1.60	1.75	1.60
	Standard Compression	2.30	2.00	2.55	2.00
	Cotton Linters, in compressed bales—NOT Compressed to High Density or Standard Compression	2.90	2.50	3.20	2.50
	Cotton Duck, in bales or rolls	.85/1.50	.75/1.40	.95/1.70	.85/1.55
	Cotton, Piece Goods	.85/1.50	.70/1.35	.95/1.70	.80/1.55

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North Atlantic Continental Freight Conference

All Rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Page	Antwerp Rotterdam Amsterdam		Hamburg Bremen Bremerhaven	
	Conference	Isbrandtsen	Conference	Isbrandtsen
27. Cotton Refuse and Waste, (Factory Sweepings), in compressed Bales:				
Weighing 32 lbs. or more per cubic foot	$1.60	$1.75	$1.75	$1.95
Weighing less than 32 lbs. per cubic foot	2.10	2.00	2.30	2.55
Cottonseed Hull Shavings Pulp & Cotton Linter Pulp, in compressed or sheet form, NOT treated other than bleaching:				
Up to and including 100′ per ton	1.55	1.40	1.70	1.50
Over 100′ to and including 150′ per ton	2.00	1.80	2.25	2.00
Over 150′ per ton	2.50	2.25	2.75	2.50
28. Crystals, Citric Acid—Apply Drugs and Medicines Rate	1.15/2.05	.90/1.80	1.25/2.25	1.00/2.00
Dangerous Cargo, N. O. S. restricted to on deck stowage ONLY, in accordance with Governmental Regulations	1.45/2.60	1.30/2.35	1.60/2.90	1.45/2.60
Dental Goods, N. O. S.	1.20/2.15	1.00/1.80	1.30/2.30	1.10/2.10
Dental Units, consisting of Fountain Cuspidors, Drills or Accessory Tables, (NOT Dental Goods, N. O. S.) with or without Dental Chairs—Apply Chairs, Dental Rate	.75/1.35	.65/1.20	.85/1.50	.75/1.35
29. Documents, Negotiable (Minimum Charge $10.00 per package)	1½%	1¼%	Ad Val. 1½%	1¼%
30. Doors, Unglazed, subject to the following Clause: "Unprotected Carried at Owner's Risk of Breakage or damage"	1.40	1.25	1.55	1.40
Dresses, Cotton	1.00 ft.	.90	1.10 ft.	1.00
Dresses, Silk or Artificial Silk	1.00 ft.	.90	1.10 ft.	1.00
Dressings, Leather, Liquid	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Druggist Sundries, N. O. S. (NOT Drugs or Medicines)	.85/1.50	.75/1.35	.95/1.70	.85/1.50

Conference Tariff Page		Antwerp Rotterdam Amsterdam		Hamburg Bremen Bremerhaven	
		Conference	Isbrandtsen	Conference	Isbrandtsen
30 (Contd.)					
	Drugs and Medicines of every description (NOT Penicillin or Refrigerated Cargo, which see), including Beef Extract, Epsom Salts, Patent (Proprietary) Medicines, Liniments, Medicinal Tonics or Syrups, Mineral Oil, in cases or fibre drums	$1.15/2.05	$1.00/1.80	$1.25/2.25	$1.10/2.00
	Dyes and Dyestuffs, (Nonhazardous), including intermediates, in bulk in barrels, drums or cases	.85/1.50	.65/1.20	.95/1.70	.75/1.35
31.	Earth, Fullers	.80	.75	.90	.75
	Effects, Personal	1.00 ft.	.85	1.20 ft.	.85
	Eggs, Dried or Powdered	.85/1.50	.60/1.10	.95/1.70	.60/1.10
	Eggs, Ordinary Stowage, N. O. S.	.65 ft.	.60	.70 ft.	.70
	Electrodes, Carbon or Graphite	1.30	1.10	1.45	1.25
32.	Ether, Isopropyl (Caution)	1.45/2.60	1.45/2.50	1.60/2.90	1.60/2.90
33.	Extract, Quebracho	.85	.75	.95	.95
	Feathers, in bags or bales	4.05	3.25	4.45	3.50
34.	Feeds, Barley	.80	.75	.90	.90
	Feeds, Meal, Corn Oil	.80	.75	.90	.85
	Feeds, Meal, Cottonseed	.80	.75	.90	.85
35.	Feeds, Meal, Fish and Shrimp Bran	.80	.75	.90	.85
	Feeds, Meal, Gluten	.80	.70	.90	.80
	Feeds, Meal, Peanut—Apply Oilcake, All kinds Rate	.60	.80	.65	.90
	Feeds, Meal, Rapeseed	.60	.80	.65	.90
	Feeds, Meal, Soya Bean (NOT Flakes, Soya Bean, which see)—Apply Oilcake, All Kinds Rate	.60	.75	.65	.85
	Feeds, Oat Feed including Oats Hulls, Ground	.90	.80	1.00	.90
	Feeds, Oats, Rolled, in bags (NOT for Human Consumption)	.90	.80	1.00	.90
36.	Fencing, Combination Wood and Wire, in rolls	1.40	1.60	1.55	1.55
	Ferro Chrome, in barrels or drums	18.00 Ton	16.00	19.75 Ton	19.75
	Ferro Manganese, Spiegeleisen Packed	15.00 Ton	14.50	16.50 Ton	16.50
	Ferro Molybdenum	20.75 Ton	19.00	22.75 Ton	21.00
	Ferro Silicon (CAUTION)	15.00 Ton	14.00	16.50 Ton	15.50
	Fibre Hemp, in bales:				
	Measuring up to and including 70′ per Ton	1.50	1.35	1.65	1.50
	Measuring over 70′ per ton	2.30	2.00	2.55	2.25
	Fibre Rayon Staple, in bales	2.50	1.90	2.75	2.10
	Fibre Sheets, Vulcanized (NOT Paper Boards, which see)	1.30	1.15	1.45	1.25

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All Rates in cents per 100 lbs. unless otherwise stated

Conference Tariff Page		Antwerp Rotterdam Amsterdam		Hamburg Bremen Bremerhaven	
		Conference	Isbrandtsen	Conference	Isbrandtsen
37.	Fixtures, Electric, Lighting and Replacement Parts	$.85/1.50	$.70/1.35	$.95/1.70	$.80/1.55
38.	Flax Tow and Resins	2.10	2.00	2.30	2.20
	Flints (Minimum Charge per Package $25.00) (Isbrandtsen Minimum Charge per Package $12.50)	.85/1.50	.85/1.50	.95/1.70	.95/1.70
	Flour, Potato, in bags	1.00	.90	1.10	1.00
	Flour, Prepared	.95	.85	1.05	.95
	Flour, Soya Bean	.90	.80	1.00	.90
	Flour, Soya Bean for Relief Only	.80	.73	.90	.81
	Flour, in Bags (For Relief)	.80	.73	.90	.81
	Flour, Matzoh (For Relief Only)				.80
39.	Flour, Wheat Flour	.80	.75	.90	.80
	Wheat Four (For Relief)	.80	.65	.90	.75
	Corn Starch	.80	.72	.90	.85
	Corn Starch (For Relief)	.80	.65	.90	.75
	(Flour) Classes One and Two, in bags	.80	.75	.90	.85
	In Bags For Relief	.80	.65	.90	.75
	Flour, in cartons	.85	.80	.95	.90
	Grain, in bags, as follows:				
	Barley	.80	.70	.90	.75
	Corn (NOT Seed Corn)	.70	.65	.75	.70
	Oats, including Feed Oats	.90	.80	1.00	.90
	Wheat	.70	.65	.75	.70
40.	Food Packages—"Care" Relief Shipments, in cartons	1.35	1.20	1.50	1.35
	Food Packages, Gift or Relief ("Care" Type), in cases or cartons, NOT exceeding 100' per Ton	1.35	1.30	1.50	1.45
	Formaldehyde (CAUTION)	2.60	2.30	2.85	2.50
	Frames, Hand Bag, in cases	.85/1.50	.85/1.50	.95/1.70	.85/1.70
41.	Fruit(s), Citrus, Ordinary Stowage: (MUST be strapped or Guarantee given)				
	In wooden boxes, NOT exceeding 2'9"	1.15 ea.	1.00	1.25 ea.	1.10
	Fruit, Dried, N. O. S.: (NOT Fruits, Dehydrated, which see)				
	Barrels	1.10	.90	1.20	1.00
	Bags	1.10	.90	1.20	1.00
	Fibre Containers, Whether or not strapped or wired	1.10	.90	1.20	1.00
	Wooden Boxes, Strapped	1.10	1.00	1.20	1.10
	Wooden Boxes, not strapped	1.25	1.15	1.40	1.25

COPY BOUND CLOSE IN CENTER

COPY BOUND VERTICALLY

North Atlantic Continental Freight Conference

All rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Pages	Commodity	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
42.	Fur, Furs or Skins, N. O. S.	$1.75 ft.	$1.50	$1.95 ft.	$1.65
	Fur, Hatter's, N. O. S., in cs.	1.75 ft.	1.50	1.95	1.65
	Fur, Hatter's, Blown, in bags, bales or cases	1.75 ft.	1.50	1.95 ft.	1.65
	General Cargo, other than Dangerous Cargo, which see, Not Otherwise Specified	.85/1.50	.75/1.35	.95/1.70	.85/1.50
43.	Glass, Plate, in cases NOT exceeding 15 ft. any dimension	1.05	.95	1.15	1.05
	Glass, Rough rolled, in sheets	1.05	.95	1.15	1.05
	Glue, Dry	1.40	1.25	1.55	1.40
	Glue, Liquid	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Glycerine, in drums	1.75	1.50	1.95	1.65
	Glycols, in steel drums	1.75	1.60	1.95	1.75
45.	Guides, Steel Elevator	17.25 Ton	15.00	19.00 Ton	19.00
	Gum, Damar	1.90	1.70	2.10	1.90
	Gum, Tragacanth, in bags	1.90	1.70	2.10	1.90
46.	Hair, Cattle, Goat or Horse, Raw, Curled, rope or open form (NOT Manufacturers of Hair) in compressed bales	3.45		3.80	
	Not ex. 21¢ lb.		2.00		2.20
	Exceeding 21¢ lb.		2.25		2.50
	Hair, Cattle, in cases	1.50 ft.	1.20	1.65 ft.	1.30
	Hair, Horse, in cases	4.05	1.00/3.00	4.45	1.15/3.30
	Hair, Reclaimed (Used) Black Curled, in bales—Apply Hair, Hog Rate	3.45	2.50	3.80	2.60
47.	Heaters, Water and Parts	.85/1.50	.55/1.00 .75/1.35	.95/1.70	.65/1.20 .85/1.50
	Hemp, Tow	2.30	2.00	2.55	2.25
	Hides, Viz:				
	Cattle, Dry Loose or in bales or bundles, Unprotected	2.00	1.70	2.20	1.90
	Cattle, Horse or Sheep, Green Salted, Unprotected	2.00	1.50	2.20	1.70
	Split, Raw Pickled in bundles	2.00	1.60	2.20	1.80
	Trimmings, Cattle Green Salted, in bags (For Gluestock Purposes)	23.00 Ton	19.50	25.25 Ton	21.50
48.	Hoists, Coal and Ore, including manufacturers of structural material	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Hoofs, Cattle, in bags or bales	13.75 Ton	12.50	15.25 Ton	14.00
	Hops in bales or cases	2.60	2.30	2.85	2.55

All rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Pages	Commodity	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
49.	Hosiery	$.85/1.50	$.75/1.35	$.95/1.70	$.85/1.50
	Houses, Portable, K. D. or in Sections	.50/90	.45/80	.55/1.00	.50/90
	Incubators, Brooders & Pts.	.70 ft.	.65 ft.	.75 ft.	.70
	Ink, Newspaper Printing, in drums	1.20	1.10	1.30	1.20
	Ink, Printers or Printing N. O. S., in drums	1.75	1.60	1.95	1.75
	Insecticide, Agricultural	1.50	1.35	1.65	1.50
	Insecticide, Containing DDT	.80 ft.	1.50–100#	.90 ft.	1.70–100#
	Instruments, Dental	1.20 ft.	1.00	1.30 ft.	1.10
	Instruments, Scientific	1.20 ft.	1.00 ft.	1.30 ft.	1.10
	Instruments, Surgical	1.20 ft.	1.00	1.30 ft.	1.10
	Insulating Material, Santocel	.45 ft.	.40	.50 ft.	.45
	Insulation, Hair, Felt	3.05	3.05	3.35	3.55
50.	Iron or Steel				
	Axles, Used Scrap Railway Car	15.00 Ton	12.00	16.50 Ton	15.25
	Band (NOT Steel Strapping); Bars, Billets; Blooms; Hoop; Slabs (NOT Plates); Strip (NOT Sheets); loose, in bundles, coils, roll or iron banded on pallets	11.50 Ton	10.00	12.75 Ton	11.00
	Bands (Manufactured Band Iron known as Strapping)	18.50 Ton	10.00	20.25 Ton	11.50
	Bars, NOS packed	15.00 Ton	13.50	16.50 Ton	14.75
	Bars, Steel Cold Drawn, in protected Metal containers	11.50 Ton	10.00	12.75 Ton	12.75
	Bolts and Nuts	13.75 Ton	12.00	15.25 Ton	15.25
	Castings or Forgings, rough, Loose or Packed (Pieces under 50 lbs. MUST be packed)	21.75 TW/M	21.75	24.00 TW/M	24.75
	Chains, Anchor	13.75 Ton	12.00	15.25 Ton	15.25
	Hoops, Barrel	22.75 Ton	21.00	25.00 Ton	23.00
	Iron Phosphorus, in bulk	11.50 Ton	10.20	12.75 Ton	11.45
	Iron, Pig	11.50 Ton	10.00	12.75 Ton	12.75
51.	Iron or Steel (Cont'd)				
	Nails, Iron Shoe—Apply Nails N. O. S. RATE	20.75	19.00	22.75	21.00
	Pipe: (NOT Seamless on which apply Tubes or Tubing, Seamless Rate) Up to 4" diameter incl. inside measurement	12.75 Ton	11.50	14.00 Ton	12.75
	Over 4" to 6" etc.	15.00 Ton	13.50	16.50 Ton	15.00
	Over 6" to 8" etc.	20.25 Ton	18.00	22.25 Ton	20.00
	Over 8" to 12" etc.	27.00 Ton	25.00	29.75 Ton	27.00
	Over 12" etc.	12.75 TW/M	11.50 TW/M	14.00 TW/M	12.75 TW/M
	Plates and Shapes, Ships (NOT assembled)	13.75 Ton	11.50	15.25 Ton	12.75
	Rivets	13.75 Ton	12.00	15.25 Ton	12.25
	Screws	12.75 Ton	20.00	25.00 Ton	22.00
	Sheets and Plates, N. O. S. (NOT Tie Plates of Tin Plate) plain or galvanized, base, etc.	13.75 Ton	10.00	15.25 Ton	11.50

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All rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Pages	Commodity	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
51.	Iron or Steel (Cont'd)				
	Sheets, Corrugated	$14.75 Ton	$12.00	$16.25 Ton	$16.25 Ton
	Sheets or Strips, Steel, Aluminum Clad; Nickel Clad or Stainless Steel Clad	26.50 Ton	20.00	29.25 Ton	22.00
	Skelp	13.75 Ton	11.50	15.25 Ton	14.00
	Spikes	13.75 Ton	12.00	15.25 Ton	15.25
	Stainless Steel, Bars, Tubing; Wire finished or unfinished, etc.	19.00 Ton	15.00	21.00 Ton	18.00
52.	Iron and Steel (Cont'd)				
	Steel N. O. S., in cases	19.00 Ton	18.00	21.00 Ton	20.50
	Structurals, (NOT assembled or Guides, Elevator, which see) i. e. Angles, Beams, etc.	13.75 Ton	12.00	15.25 Ton	15.25
	Tin Plate or Terne Plate incl. Circles (NOT Ends, Can) Cobbles; Misprinted; Strips and Waste Waste	14.00 Ton	11.50	15.50 Ton	12.75
	Tubes or Tubing, Seamless (NOT Stainless; Golf Shafts, or other Manufacturers of) Up to and including 4" outside diameter	19.25 Ton	17.00	21.25 Ton	19.00
	Over 4" to and including 6" Outside diameter	21.50 Ton	19.25	23.75 Ton	21.50
	Over 6" to and including 8" Outside diameter	26.75 Ton	24.00	29.50 Ton	27.00
	Over 8" to and including 12" Outside diameter	33.50 Ton	30.00	36.75 Ton	33.00
	Over 12" outside diameter	19.25 TW/M	17.00	21.25 TW/M	19.00
	Washers, Plain, (NOT Serrated or other special Type Washers or Gaskets, which see)	22.75 Ton	22.75	25.00 Ton	23.00
	Wheels, Car, Old (Off Axles), N. O. S.	13.75 Ton	12.00	15.25 Ton	15.25
	Wire, Barbed	13.75 Ton	12.00	15.25 Ton	15.25
	Wire, Plain or Galvanized, in coils or bundled coils	12.00 Ton	11.40	13.25 Ton	12.65
	Wire Rope, on reels	24.25 Ton	21.00	26.75 Ton	23.50
53.	Ivory Nuts, in bags	1.45	22.00 Ton	1.60	24.25 Ton
	Kapok, in Comp. Bales Not exceeding 200 ft. per Ton		1.70		1.90
	Kapok, in bales	1.95		2.15	
	Kapok, Used, in bales	2.30	1.95	2.55	2.15
54.	Lamb Waste Cuttings (NOT whole skins) in bales	3.45	3.10	3.80	3.45
	Latex, in drums	.85/1.50	.75/1.35	.95/1.70	.85/1.50
55.	Lead, Sheets	16.50 Ton	15.00	18.25 Ton	16.50
	Leather, Artificial	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Leather, Finished, in bales, bundles, or cases	**1.30 ft.**	**1.00**	**1.45 ft.**	**1.10**
	Leather, Sole (Bends, Backs & Sides) etc., in bales or bundles	**2.55**	**2.10**	**2.80**	**2.30**

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All rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Pages	Commodity	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
	Leather, Soles, Cut, in bales or bdls	$3.45	$2.80	$3.80	$3.00
56.	Liquors, Spirits or Wines, in barrels and cases	1.05 ft.	.85	1.15 ft.	.85
	Lithopone and Lithopone Sub	1.00	.90	1.10	1.00
60.	Lumber and Timber: (Unless specified NOT Treated or Creosoted)				
	Flooring Blocks, Birch, Maple and Oak (NOT Parquetry which see)	1.15	1.00	1.25	1.05
	" Heavy, N. O. S.	1.05	.90	1.15	1.00
	Squares and Wooden Billets (Rough Sawn) Dimension Stock in bags or bundles	1.05 Heavy	.90	1.15 Heavy	1.00
	Veneer, in cases or crates	1.25	1.05	1.35	1.15
62.	Machinery, Viz:				
	Air Compressors, on Skids or on Wheels	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	Electrical and Parts, N. O. S.	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	Heavy Industrial—Power Generating or Power Driven N. O. S.	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	Laundry—(Also See Machines, Washing, Household)	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	Mining	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	N. O. S.	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	Refrigerating, Industrial Plant	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	Textile Winding—(Also see Frames)	.85/1.50	.70/1.30	.95/1.70	.80/1.40
	Macaroni, Dried, in cases	1.15	.85	1.25	1.00
63.	Machines, Viz:				
	Sewing	.80/1.45	.70/1.30	.90/1.60	.80/1.45
	Washing, Clothes, Household and Parts, N. O. S., (Also see Machinery, Laundry)	.45/80	.40/75	.50/90	.45/80
64.	Magnesium, Viz:				
	Carbonate, in bags or bbls	1.75	1.60	1.95	1.75
	Chloride of	16.75 Ton	14.00	18.50 Ton	15.25
	Metal or Magnesium Metal Alloy, in bundles or cases (Caution)	.85/1.50	.70/1.30	.95/1.70	.75/1.35
	Sulphate of, in bags or bbls	.85	.80	.95	.90
	Magnetos	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Malt, in bags	1.05	.75	1.15	.85
	Manganese Sulphate (Fertilizer Grade), in bags	1.00	.95	1.10	1.05
	Marbles, Glass, Packed	1.00	.85/1.50	1.10	.95/1.70
	Matzos	1.85	1.60	2.05	1.85
	Matzos For Relief	—	—	—	1.80
65.	Metal, Antimony	.85/1.50	.60/1.20	.95/1.70	.85/1.50
	Meters, Viz:				
	Electric	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Gas	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Oil & Gasoline Without Pumps	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Water	.85/1.50	.75/1.35	.95/1.70	.85/1.50

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Conference Tariff Pages	Commodity	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
66.	Methyl Ethyl Ketone (Caution)	$1.75	$1.60	$1.95	$1.95
	Methyl. Isobutyl Ketone (Caution)	.85/1.50	1.75	.95/1.70	1.95
	Mica, Sheets, in cases	1.05	.95	1.15	1.05
	Milk Viz:				
	Condensed and Evaporated, in bulk, barrels or drums	1.00	.70	1.10	.75
	Condensed and Evaporated in tins in cases (if wooden Must be strapped or wired)	.75	.65	.85	.75
	Malted	1.40	1.25	1.55	1.35
	Powdered	1.20	.85	1.30	1.00
	Powdered Skim, for Human Consumption	1.05	.85	1.15	1.00
	Sugar of, in barrels	1.75	1.55	1.95	1.75
	Milkweed, Fibre, in Comp bales	4.00	1.95	4.50	2.15
	Molasses, in bulk, in barrels	.80	.75	.90	.85
67.	Monochlorobenzol (Caution)	.65/1.15	.55/1.00	.70/1.25	.65/1.15
	Monononylnaphthalene—Apply Dodecyl Toluene Rates	1.20	1.50	1.30	1.65
	Motorcycles, Sidecars, Etc.	.50 ft.	.45	.55 ft.	.50
	Motors, Electric	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Motors, Marine	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Mowers, Lawn (NOT Power Driven)	.50 ft.	.45	.55 ft.	.50
	Mushrooms, in tins in cases—Apply Canned Goods Rates	1.00	.90	1.10	1.00
	Newspapers, Old, in bales:				
	Up to and including 100 cu. ft. per ton	1.20	1.10	1.30	1.20
	Over 100 cu. ft. per ton	1.55	1.40	1.70	1.55
68.	Nickel, Sulphate, in bags, bbls.	20.75 Ton	19.00	22.75 Ton	21.00
	Nicotine, Sulphate, in drums	1.75	1.60	1.95	1.75
	Nitro Cellulose, Wet, NOT less than 35% water or alcohol (Except Rotterdam which 30% water or alcohol) in steel barrels (Caution)	.75 ft.	.65	.85 ft.	.75
	Nuts, Shelled, NOT Peanuts (out of Shell) N. O. S.	2.60		2.85	
	Almonds N. O. S.		1.80		2.00
	Nuts, Unshelled, (In the Shell), N. O. S.	3.05	2.50	3.35	2.80
69.	Office Appliances, Except Typewriters	.85/1.50	.70/1.35	.95/1.70	.75/1.50
	Oil(s) Viz:				
	Aniline, in drums (Caution) Dangerous Cargo Rate	1.45/2.60	1.00/1.80	1.60/2.90	1.25/2.10
70.	Oil (Cont'd)				
	Castor	1.40	1.20	1.55	1.30
	Cottonseed, in barrels, dr.	1.05	.95	1.15	1.05
	Essential	1.55 ft.	1.25	1.70 ft.	1.40
	Fish, Industrial (other than medicinal) in barrels or drums	1.40	1.15	1.55	1.25

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All rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Pages	Commodity	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
70.	Oil (Cont'd)				
	Linseed, in barrels or dr.	$1.40	$1.15	$1.55	$1.30
	Lubricating, Mineral (NOT Oil, Sewing or for Human Consumption):				
	In standard barrels or drums, NOT exceeding 12' 3"	4.05 bbl.	3.60	4.45 bbl.	4.00
	Exceeding 12' 3"	.90	.80	1.00	.90
	In half barrels, NOT exceeding 7'	2.60 ½ bbl.	2.50	2.85 ½ bbl.	2.70
	In quarter barrels or dr.	.90	.80 ¼ bbl.	1.00	.90 ¼ bbl.
	In kegs & tins, in cases	.90	.80	1.00	.90
71.	Oil (Cont'd)				
	Olive	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Palm Kernel, in bbls., casks	1.40	.95	1.55	1.05
	Peanut, in barrels or drums	1.05	.95	1.15	1.05
	Rapeseed	1.40	1.20	1.55	1.30
	Soya Bean, in barrels or drums	1.05	.95	1.15	1.05
	Tea Seed, in drums	1.40	1.25	1.55	1.35
	White Petroleum Mineral, in barrels or drums for Medicinal Products For Relief Only	4.05 bbl.	3.20	4.45 bbl.	3.60
72.	Oilcloth, Table	.60 ft.	.55	.65 ft.	.60
	Oil Production Machinery N. O. S.	20.00 TW/M	18.00	—	—
	Oil Well Material and Oil Well (Machinery)	26.00 TW/M	.60/1.10	—	—
72A.	Ore, Viz:				
	Molybdenite, or Concentrates	17.25 Ton	15.50	19.00 Ton	17.00
	Rutile—Apply Ore Iron, Crushed or Powered, in drums	13.75 Ton	12.50	15.25 Ton	13.75
73.	Ore, Viz: (Cont'd)				
	Vanadium or Concentrates, in barrels or drums	2.20	2.00	2.40	2.20
	Vanadium or Concentrates, in bags, NOT exceeding $200.00 per 2240 lbs.	26.00 Ton	22.00	28.50 Ton	24.50
	Wolfram (Iron Sand), bags	20.75 Ton	17.50 Ton	22.75 Ton	20.00
	Overalls or Coverall—Apply Clothing N. O. S. Rate	1.00 ft.	.80 ft.	1.10 ft.	.90 ft.
	Oxide, Viz:				
	Antimony, in bags	1.50	1.35	1.65	1.50
	Iron (NOT Spent) bags, bbl. dr.	1.20	1.10	1.30	1.20
	Magnesium, in bags, cts. etc	14.00 TW/M	13.00	15.50 TW/M	14.00
	Zinc	1.00	.90	1.10	1.00
	Packing, Asbestos Flax	.85/1.50	.75/1.35	.95/1.70	.85/1.50
74.	Pads, Sanitary	.45 ft.	.40	.50 ft.	.45
	Oil	5.75	4.50	6.25	5.00

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All rates are in Cents per 100 lbs. unless otherwise stated

Conference Tariff Pages	Commodity	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
	Paintings, Tapestries, etc.	2.20 ft.	1.90	2.40 ft.	2.10
	Paints, (Caution)	.85/1.50	.75/1.40	.95/1.70	.85/1.55
	Paper, Viz:				
	Asbestos Fibre	1.30	1.15	1.45	1.30
	Bags, N. O. S., Packed	1.65	1.45	1.80	1.60
75.	Boards, N. O. S., including Coated, Glazed or Laminated:				
	In cases, or on reels	1.90	1.70	2.10	1.90
	In bundles, rolls or on skids	1.55	1.40	1.70	1.55
[fol. 1894]					
	Carbon—Apply Stationery Rate	$.85/1.50	$.75/1.35	$.95/1.70	$.85/1.50
	Cleansing Tissue	2.90	2.30	3.20	2.55
	For Relief		2.30		2.60
76.	Paper, Viz: (Cont'd)				
	Containers For Relief Only		1.21		1.30
	K. D. F. Cardboard	1.75	1.60	1.95	1.75
	Newsprint, in rolls	1.15	1.00	1.25	1.10
77.	Paper, Viz: (Cont'd)				
	Printing, N. O. S. in bales or cases For Relief		1.21		1.33
	Printing, N. O. S. in bls. or cs.	1.50	1.35	1.65	1.55
	Printing N. O. S. in large rolls	1.15	1.05	1.25	1.15
	Printing N. O. S. For Relief		.90		1.01
	Printing, Manila in Rolls	1.05	1.00	1.15	1.05
	Tape, Gummed, For Relief Only		1.82		2.02
	Tissue	.80/1.45	.70/1.30	.90/1.60	.80/1.45
	Toilet	2.90	2.75	3.20	3.00
	Toilet For Relief		2.30		2.55
	Wall	2.40	2.10	2.65	2.35
	Waste, in Comp. Bales	1.55	1.40	1.70	1.55
78.	Paper, Viz: (Cont'd)				
	Wrapping (Alsosee packing) N. O. S. (NOT Manufacturers of or Cellophane)	1.75	1.60	1.95	1.75
	Paraffin, Chlorinated, in barrels or drums	1.15	1.00	1.25	1.10
	Paste, Flour, Dry, in bags or bbls.	1.40	1.25	1.55	1.40
	Peanuts, Salted	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Peas, Dried in bags	.90	.80	1.00	.90

COPY BOUND VERTICALLY

All rates in Cents per 100 lbs. unless otherwise stated

1150

Conference Tariff Pages	Commodity	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
79.	Pencils, Mechanical	1.20/2.15	1.00/1.80	1.30/2.30	1.10/2.20
	Penicillin, Ordinary Stowage	1.75 ft.	1.50	1.95 ft.	1.70
	Phenol, (Crude Carbolic or Crude Tar Acid) (Caution)	1.40	1.10	1.55	1.20
	Phonographs, S. U.	.65 ft.	.60 ft.	.70 ft.	.65
	Phosphate, Triphenyl, in barrels or drums	.65 ft.	.60	.70 ft.	.65
[fol. 1895]					
80.	Phosphorus, N. O. S. (Caution)	$2.60	$2.30	$2.85	$2.50
	Phthalate, Dibutyl, in cases or drums	1.75	1.60	1.95	1.80
	Phthalic Anhydride, in barrels	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Pineapples, Ordinary Stowage, Must be strapped or guarantee given:				
	In wooden boxes or crates NOT exceeding 1' 7"	.80 ea.	1.15 ea.	.90 ea.	1.10 ea.
	In wooden boxes or crates NOT exceeding 3'	1.55 ea.		1.70 ea.	
	NOT exceeding 2'9"		1.15 ea.		1.70 ea.
	Pipe, Brass or Copper	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Lead, up to 4" Outside Diameter	20.75 Ton	18.00	22.75	20.00
81.	Plaster of Paris, N. O. S.	.50/90	.40/80	.55/1.00	.45/90
82.	Polish, Liquid or paste (Caution)	.85/1.50	.65/1.25	.95/1.70	.70/1.35
	Potash or Potassium, Viz:				
	Bichromate (Caution)	1.05	.95	1.15	1.05
	Carbonate (Caution)	1.20	1.00	1.30	1.15
	Caustic (Caution)	1.20	1.00	1.30	1.15
	Chlorate (Caution)	1.50	1.35	1.65	1.50
	Permanganate, in steel drums (Caution)	.85/1.50	.65/1.25	.95/1.70	.65/1.25
	Potatoes (NOT Dehydrated), in bags, barrels, cases or crates, Ordinary Stowage	1.05	1.00	1.15	1.10
83.	Powder Viz:				
	Aluminum	2.20	2.00	2.40	2.20
	Bronze (Caution) (Not Powder, Aluminum)	.85/1.50	.75/1.35	.95/1.70	.85/1.50
	Iron	.85/1.50	.75/1.50	.95/1.70	.85/1.60
	Molding, N. O. S. (NOT Resin, Synthetic, which see)	.85/1.50	.65/1.15	.95/1.50	.75/1.40
	Soup (Dehydrated) Apply General Cargo Rate	.85/1.50	.65/1.15	.95/1.70	.70/1.25
	Preserves, Fruit, including Preserved Fruit, apple and Peanut Butter, Jams, Jellies, Jelly Powder, Marmalade, Pudding Powder, etc.:				
	In cases, strapped or wired	1.65	1.50	1.80	1.70
	In cases, NOT strapped	1.85	1.70	2.05	1.90

COPY BOUND CLOSE IN CENTER

Conference Tariff Pages	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
84. Products or By-Products, Animal (Ordinary Stowage) In cases, tierces, barrels, half barrels, or bales	$1.05	$.95	$1.15	$1.05
Casings, Animal, wet or Pickled:				
In Tierces, barrels or half barrels	1.05	.95	1.15	1.05
Lard, Lard Substitute, Vegetable Compound:				
In pails or buckets two or more pails or buckets in a crate weighing over 50 lbs. per crate, strapped	.90	.80	1.00	.90
In cases, if wooden MUST be strapped or wired	.90	.80	1.00	.90
In wooden cases NOT strapped or wired	1.00	1.15	1.10	1.25
Meats, in glass or tins:				
In cases, if wooden Must be Strapped or wired	1.05	.95	1.15	1.05
In wooden cases NOT strapped or wired	1.15	1.05	1.25	1.15
85. Pumps and Parts, N. O. S.	.85/1.50	.70/1.30	.95/1.70	.80/1.40
Pumps, Automobile Service Station and Parts, Gasoline and Oil	.65/1.15	.55/1.00	.70/1.25	.60/1.10
86. Radios and Equipment:				
Radios, Set Up	.70 ft.	.60	.75 ft.	.65
Power Units or other parts, except Tubes or Batteries, if packed separately	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Tubes or Batteries, if packed separately	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Rags,in bales	2.30	2.00	2.55	2.00
87. Ranges, Electric or Gas	.65 ft.	.60	.70 ft.	.65
Refrigerators and Parts (NOT Machinery, Industrial Cold Storage Plant or Ice Making)	.45/.80	.40/75	.50/90	.45/.80
Refrigerators, Store Display, with Counters or Show Cases and Parts	.45/.80	.40/.75	.50/90	.45/80
88. Refrigerator List:				
Albumen, Egg	1.30	1.50/2.70	1.45	1.65/2.95
Apples and Pears, Fresh:				
In Barrels—Bushel size	1.20 ea.	1.10	1.30 ea.	1.20
NOT exceeding 4′ ea. (Halves)	2.30 ea.	2.10	2.50 ea.	2.30
NOT exceeding 7′ ea.	3.45 ea.	3.15	3.80 ea.	3.45
Exceeding 7′ ea.	.50 ft.	.45	.55 ft.	.50
In Baskets, tub shaped (Bushel size) etc. Must be cross strapped or wired	1.90 ea.	1.75	2.10 ea.	1.95
In Wooden Boxes (MUST be strapped or Wired or guarantee given) NOT Exceeding 1′ ea. (Halves)	.90 ea.	.80	1.00 ea.	.90

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Conference Tariff Page	Refrigerator List	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
88.	Apples cont'd. (In Wooden Boxes)				
	NOT exceeding 1' 8" ea. etc.	$1.20 ea.	$1.10	$1.30 ea.	$1.20
	Exceeding 1' 8" ea.	.70 ft.	.65	.75 ft.	.70
	Bundled two to a packag. (Halves), not Exceeding 1' 8" ea.	1.20 ea.	1.10	1.30 ea.	1.20
	In Containers of Fibreboard construction, etc. bushel size	1.20 ea.	1.10	1.30 ea.	1.20
	Half Bushel Size	.90 ea.	.80	1.00 ea.	.90
	In all other packages, including fibre cartons and baskets N. O. S. Subject to Rule 21	.80 ft.	.70	.90 ft.	.75
	Citrus Fruits (MUST be strapped or Wired or Guarantee given)				
	Boxes, Wooden NOT exceeding 2' 9" ea.	1.90 ea.	1.75	2.10 ea.	1.95
	Boxes, Wooden (Halves), not exceeding 1' 4" ea.	1.20 ea.	1.10	1.30 ea.	1.20
	Boxes, Wooden (Halves) Bundled two to a bundle, NOT exceeding 2' 9"	1.90 ea.	1.75	2.10 ea.	1.95
	Boxes exceeding 2' 9" ea.	.75 ft.	.70	.80 ft.	.75
89.	Eggs, Fresh, in Shell, in wooden cases	1.00 ft.	.90	1.10 ft.	1.00
	Whole, Frozen	1.30 ft.	1.05	1.45 ft.	1.15
	Grapes: In Boxes, Chests or lugs, NOT exceeding 1' ea.	.70 ea.	.65	.75 ea.	.70
	" " " " " " 1' 4" ea.	.90 ea.	.85	1.00 ea.	.95
	" " " " " " 1' 9" ea.	1.15 ea.	1.05	1.25 ea.	1.15
	In Kegs, NOT exceeding 2' 6"	1.75 ea.	1.60	1.95 ea.	1.75
	Grapes, N. O. S.	.80 ft.	.75	.90 ft.	.85
	Melons	1.00 ft.	.90	1.10 ft.	1.00
	Peaches: (MUST be strapped, etc.) In baskets; in wooden boxes or In boxes bundled	.90 ft.	.80	1.00 ft.	.90
	Pineapples: (MUST BE strapped, etc.) In wooden boxes NOT exceeding 2' 9" ea.	.90 ft.	2.30 each	1.00 ft.	2.55 each
90.	Products or By-Products, Animal etc. in cases, etc.				
	Requiring temperature of 25 degrees or lower	2.30	1.90	2.50	2.10
	Requiring temperature above 25 degrees and lower than 35 degrees.	1.85	1.55	2.05	1.70
	Requiring temperature of 35 degrees or over	1.70	1.40	1.90	1.55
	Frozen Packing House Products, etc.	2.15	1.80	2.35	2.00
	Frozen Carcasses and Parts including cost of unloading cars	3.50	2.90	3.85	3.20
	Frozen Pig Heads, in bags or boxes	3.50	2.90	3.85	3.20

COPY BOUND CLOSE IN CENTER

All Rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Page	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
90. Refrigerator List Cont'd.				
Poultry, Frozen, in boxes, double strapped or wired	$3.20	$2.90	$3.50	$3.20
Poultry, Frozen, in boxes NOT strapped or wired	3.30	3.00	3.65	3.30
Frozen Poultry, in barrels	3.25	3.05	3.60	3.35
*Vegetables, Frozen	1.50 ft.	1.05	1.65 ft.	1.15
92. Road Building, etc. Packed:				
In packages NOT exceeding 6720 lbs.	.45/80	.40/75	.50/90	.45/80
In packages 6721 to 8000#	.50/90	.45/80	.55/1.00	.50/90
Unpacked				
NOT exceeding 6720 lbs.	.70/1.25	.60/1.15	.85/1.35	.65/1.25
Weighing 6721 to 8000 lbs.	.75/1.35	.65/1.25	.85/1.50	.70/1.35
94. Rosin or resin, etc.:				
Synthetic, in bags, barrels, drums or fibre drums	.50/1.40	.45/1.20	.55/1.55	.60/1.15
Synthetic, in cases	.85/1.50	.45/1.20	.95/1.70	.60/1.15
Natural, in bags, barrels, drums or fibre drums	1.00	1.20	1.10	1.30
Rubber:				
Goods, Mechanical: Such as Belting, etc. (NOT Surgical Tape)	.80/1.45	.70/1.30	.90/1.60	.80/1.45
Goods, N. O. S.	.80/1.45	.70/1.30	.90/1.60	.80/1.45
Mats	.80/1.45	.70/1.30	.90/1.60	.80/1.40
95. Reclaimed, or Shoddy, etc.	1.15	1.05	1.25	1.25
Synthetic	1.25	1.35	1.35	1.50
Saccharin	.85/1.50	.75/1.35	.95/1.70	.85/1.50
OR	1½%	1¼% Ad Val. S/O		
Salt, in cases	1.05	.95	1.15	1.15
96. Saws and Saw Blades	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Scales, Computing	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Scales, Industrial, etc.	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Scales, N. O. S.	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Scales, Person Weigher	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Scrap, Brass, and/or Copper, In Pkgs., coils or compressed bales weighing over 50 lbs. Ea.	14.50 Ton	12.50	16.00 Ton	12.50
97. Celluloid or Film (Caution)	1.00 ft.	.80/1.40	1.10 ft.	.90/1.60
Leather, etc. in bags or bls.	2.20	2.00	2.40	2.20
Vinyl, Resin, in bags, etc.	1.45	1.30	1.60	1.45

* End of Refrigerator List.

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All Rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Page	A. R. A. Conference	A. R. A. Isbrandtsen	H. B. Conference	H. B. Isbrandtsen
98. Seeds, Alsyke	1.15	1.05	1.25	1.15
99. Grass, Fescue	1.75	1.50	1.95	1.75
Grass, Tall Meadow Oat	1.50	1.25	1.65	1.40
Meadowfescue	1.75	1.60	1.95	1.75
Mustard	1.15	1.05	1.25	1.15
Peas (Dried Peas)	.90	.80	1.00	.90
Rye Grass	1.15	1.00	1.25	1.10
Vetch	1.15	.90	1.25	1.00
101. Silk Piece Goods, or artificial Silk	1.30 ft.	1.00	1.45 ft.	1.15
102. Silver Nitrate	3% Ad Val.	2%	3% Ad Val.	3%
[fol. 1899]				
102. Skins, Goat, Raw	$3.45	$2.85	$3.80	$3.00
Skins, Pig, Raw	3.45	3.00	3.80	3.25
103. Skins, Sheep and Lamb, semi-finished	5.20	4.50	5.70	4.95
Skins, Sheep, Dry, etc.	2.10	1.90	2.30	2.10
Skins, Sheep, Pickled, etc.	2.10	1.90	2.30	2.00
Skins, Sheep, Raw, etc.	3.45	3.00	3.80	3.30
Soap	.45/80	.40/75	.50/90	.45/80
Soap, Hard Cottonseed	17.25 ton	17.50	19.00 ton	19.00
Soap Stock, Common	17.25 ton	16.00	19.00 ton	17.00
104. Sodium or Soda, viz.:				
Ash	1.05	1.00	1.15	1.10
Bicarbonate of, in bags, etc.	1.05	1.00	1.15	1.10
Bichromate (Caution)	1.05	.95	1.15	1.05
Bisulphite, in bbls. etc.	1.00	.90	1.10	1.00
Caustic, in cases or drums	.50/90	.45/80	.55/1.00	.45/80
Chlorate (Caution)	1.50	1.35	1.65	1.50
Metallic, in drums, etc.	.80 ft.	.70	.90 ft.	.80
Phosphate, Di-Basic	1.05	.95	1.15	1.05
Phosphate, Mono-Basic	1.20	1.10	1.30	1.20
Phosphate, Pyro	1.40	1.25	1.55	1.40
Phosphate, Tribasic	.90	.85	1.00	.95
Prussiate (Yellow), etc.	1.15	1.05	1.25	1.15
Sulphide, in drums	1.30	1.15	1.45	1.25
Sulphydrate (Hydro Sulphide)	1.30	1.15	1.45	1.25
Soup Ingredients, etc.	.85/1.50	.60/1.10	.95/1.70	.65/1.20

COPY BOUND CLOSE IN CENTER

All Rates in Cents per 100 lbs. unless otherwise stated

Conference Tariff Page	A. R. A. Conference	A. R. A. Isbrandtsen	H./B. Conference	H./B. Isbrandtsen
106. Starch, Arrow Root, barrels	1.40	.70	1.55	.75
Stationery, N. O. S.	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Stearate, Calcium, Magnesium or Zinc, in bags, etc.	.65 ft.	.60	.70 ft.	.65
108. Sugar, Raw or Refined, bags	.70	.65	.75	.70
Sugar, Raw or Refined, cases	.90	.70	1.00	.80
Syrup, Cane, in bulk, etc.	.80	.75	.96	.85
Syrup, Maple, boxes, etc.	1.75	1.60	1.95	1.80
109. Talloel—(Tall Oil)	1.00	.85	1.10	1.00
110. Thorium or Thorium Nitrate	1.30 ft.	1.15	1.45 ft.	1.30
Ties, Cross, Hardwood, untreated	13.50 ton	20.00	14.75 ton	22.00
Tile, Flooring, Wall or Facing (other than Rubber)	1.20	1.10	1.30	1.20
Tin, Bar, Block, Ingot or Pig	24.25 ton	18.00	26.75 ton	20.50
Tires and Tubes, Rubber, Pneumatic, etc.	65.00 ton	55.00	70.00 ton	57.00
111. Titanium Dioxide, in bbls.	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Tobacco, Smoking	.70 ft.	.55	.75 ft.	.60
Toilet Preparations, N. O. S.	1.20 ft.	1.00	1.30 ft.	1.10
Toluol, in steel drums	2.60	2.20	2.85	2.40
Tools, Hand, N. O. S.	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Toys, Children's, etc.	.45/80	.40/70	.50/90	.45/80
113. Tungsten, Ferro, etc.	20.75 ton	18.00	22.75 ton	20.00
Twine, Binder, etc.	.90	.80	1.00	.90
Typewriters and Parts	.80/1.45	.70/1.35	.90/1.60	.75/1.50
Underwear	.85/1.50	.50 ft.	.95/1.70	.50 ft.
Urea, in bags or barrels	25.25 ton	21.25	27.75 ton	23.00
[fol. 1900]				
114. Utensils, Kitchen, etc.	$.45/80	$.40/75	$.50/90	$.45/80
Valises, Empty Fibre	.65 ft.	.50	.70 ft.	.70
Valves, Metal and Parts	.85/1.50	.70/1.30	.95/1.70	.80/1.40
Vans, Lift, containing Household Effects, etc. Up to & including 5 Tons	.70 ft.	.50	.75 ft.	.65
115. Vitamins	1.15/2.05	1.00/1.80	1.25/2.25	1.10/2.15
116. Waste, Bristle, in bales	2.50		2.75	
(Value not exceeding 10¢ lb.)		.85/1.50		.95/1.70
Waste, Rayon; Rayon Fibre, etc.	2.10	1.90	2.30	2.00

1155

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North Atlantic Continental Freight Conference

All Rates in Cents per 100 Lbs., unless otherwise stated

Conference Tariff Page	A. R. A. Conference	A. R. A. Isbrandtsen	H/B Conference	H/B Isbrandtsen
117. Wax, Bees	1.65	1.50	1.80	1.60
Wax, Candelilla, in bags	2.90	.75/1.35	3.20	.85/1.50
Wax, Carnauba	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Wax, Mineral, Paraffin, etc. bags	.90	.70	1.00	.80
Wax, Mineral, Paraffin, etc. in barrels, cartons, cases or fibre drums (Caution)	1.00	.70	1.10	.80
Wax, Montan	1.65	1.50	1.80	1.65
Wax, Vegetable	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Wheels, Abrasive	.85/1.50	.75/1.35	.95/1.70	.85/1.50
118. Wire Cloth	.85/1.50	.75,1.35	.95/1.70	.85/1.50
Wire Nickeled Chrome, in coils	.85/1.50	.75/1.35	.95/1.70	.85/1.50
Wire Tungsten (Min. Chge $10 Pkg.)	2.20/3.90	2.00/3.60	2.40/4.30	2.15/3.90
119. Woodpulp, Chemical, measuring up to and incl. 55′ to Ton	1.00	.90	1.10	1.00
Over 55′ and incl. 65′	1.10	1.00	1.20	1.10
Over 65′ to Ton	1.20	1.10	1.30	1.20
Wool, Sheep, etc. Bales up to and including 150 cu. ft. to 2240 lbs.	1.50	1.35	1.65	1.50
Bls. over 150′ incl. 200′ etc.	1.75	1.50	1.95	1.75
Bls. & bags over 200′ etc.	2.60	2.30	2.85	2.50
Wool, Shoddy, measuring up to 225 ft. to 2240 lbs.	2.30	2.00	2.55	2.25
Meas. over 225′ etc.	3.15	2.80	3.45	3.10
Wool, Steel, in bales or cs.	.45 ft.	.40	.50 ft.	.45
Wool, Tops	.85/1.50	.70/1.30	.95/1.70	.75/1.40
120. X-Ray Apparatus and Equipment	1.30 ft.	1.00	1.45 ft.	1.10
Yarn, Cotton	.80 ft.	.70	.90 ft.	.75
Yarn, N. O. S.	1.15 ft.	.95	1.25 ft.	1.05
Yarn, Rayon	.80 ft.	.70	.90 ft.	.80
Yarn, Silk	1.15 ft.	.95	1.25 ft.	1.05
Zinc, Bars, etc.	11.25 ton	10.00	12.50 ton	11.25
Zinc, Carbonate in bags, etc.	1.00	—	1.10	1.00
Zinc, Dust (Caution)	23.25 ton	21.00	25.50 ton	23.00
Zinc, Ingots, etc.	11.25 ton	10.00	12.50 ton	12.50
Zinc, Residue	13.25 ton	12.00	14.50 ton	13.25
Zinc, Sheets, in cases	18.00 ton	15.00	19.75 ton	17.00
Zinc, Slabs (Spelter) etc.	11.25 ton	10.00	12.50 ton	12.50

COPY BOUND CLOSE IN CENTER

[fol. 1901] 24.

Chart to Determine the Percentage Difference Rates of Isbrandtsen Company Inc. are Lower than the Rates of North Atlantic Continental Freight Conference.

Conference	Isbrandtsen	% I Under C	Conference	Isbrandtsen	% I Under C
$ .45	$ .40	11.1	$1.00	$ .80	20.0
.50	.45	10.0	1.00	.70	30.0
.50	.40	20.0	1.05	1.00	4.8
.60	.55	8.3	1.05	.95	9.5
.65	.60	7.7	1.05	.90	14.3
.65	.55	15.4	1.05	.85	19.0
.70	.65	7.1	1.05	.75	28.6
.70	.60	14.3	1.10	1.00	9.1
.75	.70	6.7	1.10	.90	18.2
.75	.65	13.3	1.15	1.05	8.7
.80	.75	6.3	1.15	1.00	13.0
.85	.75	11.8	1.15	.95	17.4
.85	.70	17.6	1.15	.90	21.7
.85	.65	23.5	1.15	.85	26.1
.85	.60	29.4	1.20	1.10	8.3
.85	.55	35.3	1.20	1.00	16.6
.85	.50	41.2	1.20	.95	20.8
.85	.45	47.1	1.20	.85	29.2
.90	.85	5.6	1.25	1.15	8.9
.90	.80	11.1	1.25	1.05	24.0
.90	.70	22.2	1.30	1.20	7.7
.95	.85	10.5	1.30	1.15	11.5
1.00	.95	5.0	1.30	1.00	23.1
1.00	.90	9.0	1.35	1.30	3.7
1.00	.85	15.0	1.35	1.20	11.1
1.40	1.25	10.7	1.85	1.70	8.1
1.40	1.20	14.3	1.85	1.60	13.5
1.40	1.15	17.9	1.85	1.55	16.2
1.40	.70	50.0	1.90	1.75	7.9
1.45	1.35	6.9	1.90	1.70	10.5
1.45	1.30	10.3	2.00	1.80	10.0
1.50	1.35	10.0	2.00	1.75	12.5
1.50	1.25	16.7	2.00	1.70	15.0
1.50	1.20	20.0	2.00	1.60	20.0
1.50	1.05	30.0	2.00	1.50	25.0
1.55	1.40	9.7	2.10	2.00	4.8
1.55	1.35	12.9	2.10	1.90	10.0
1.55	1.25	19.3	2.15	1.80	16.3
1.55	1.15	25.6	2.20	2.00	9.1
1.60	1.40	12.5	2.30	2.10	8.7
1.65	1.50	9.1	2.30	2.00	13.1
1.65	1.45	12.1	2.30	1.95	15.2
1.70	1.40	17.6	2.30	1.90	17.4
1.75	1.60	8.6	2.40	2.10	12.5
1.75	1.55	11.4	2.50	2.25	10.0
1.75	1.50	14.3	2.55	2.30	10.9
1.75	1.40	20.0	2.60	2.50	3.8
1.75	1.35	22.9	2.60	2.30	11.5
1.75	1.30	25.7	2.60	2.20	15.4
1.75	1.20	31.4	2.90	2.75	5.2

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Chart to Determine the Percentage Difference Rates of Isbrandtsen Company Inc. are Lower than the Rates of North Atlantic Continental Freight Conference.

Conference	Isbrandtsen	% I Under C	Conference	Isbrandtsen	% I Under C
$2.90	$2.50	13.8	$	$	
2.90	2.30	20.7		TON RATES	
2.90	1.35	53.4	11.25	10.00	11.1
3.05	2.75	9.8	11.50	10.20	11.3
3.05	2.50	18.0	11.50	10.00	13.0
3.10	2.80	9.7	12.00	11.40	5.0
3.20	2.90	9.4	12.75	11.75	7.8
			12.75	11.50	9.8
3.25	3.05	6.2	13.25	12.00	9.4
3.30	3.00	9.1	13.75	12.50	9.9
3.45	3.15	8.7	13.75	12.25	10.9
3.45	3.10	10.1	13.75	12.00	12.7
3.45	3.00	13.0	13.75	11.50	16.4
3.45	2.85	17.4	13.75	10.00	27.3
3.45	2.50	27.5	14.00	13.00	7.1
3.45	2.25	34.8	14.00	11.50	17.8
4.00	3.50	12.5	14.50	14.00	3.4
4.00	1.95	51.3	14.50	12.50	13.8
4.05	3.60	11.1	14.75	14.00	5.1
4.05	3.25	19.8	14.75	12.00	18.6
4.05	3.00	25.9	15.00	14.50	3.3
5.20	4.50	13.5	15.00	14.00	6.7
5.75	4.50	21.7	15.00	13.50	10.0
			15.00	12.00	20.0
			15.50	15.00	3.2
			16.00	14.00	12.5
16.50	15.00	9.1	25.00	22.50	10.0
16.75	14.00	16.4	25.25	21.25	15.8
17.25	16.00	7.2	26.00	24.00	7.7
17.25	15.00	13.1	26.00	22.00	15.4
18.00	16.00	11.1	26.50	20.00	24.5
18.00	15.00	16.7	26.75	24.00	10.3
18.50	10.00	45.9	27.00	25.00	8.3
19.00	15.00	21.1	27.50	20.00	27.3
19.25	17.00	11.7	30.00	27.00	10.0
20.00	18.00	10.0	32.50	22.00	32.3
20.25	18.00	11.1	33.50	30.00	10.4
20.75	19.00	8.4	65.00	55.00	15.4
20.75	18.75	10.0			
20.75	18.00	13.3			
20.75	17.50	15.7			
21.00	19.00	9.5			
22.75	21.00	7.7			
22.75	20.00	12.1			
23.00	21.00	8.7			
23.00	19.50	15.2			
23.25	21.00	9.7			
24.25	22.00	9.3			
24.25	21.00	13.4			
24.25	18.00	25.8			
25.00	23.00	8.0			

I—Means Isbrandtsen rate.
C—Means Conference rate.

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[fol. 1903] EXHIBIT "12-B"

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE

80 Broad Street, New York 4, N. Y.

Comparison of Conference and Isbrandtsen-Moller Co., Inc. Rates from November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Attached schedule of rates, on file with United States Maritime Commission, appeared in Isbrandtsen-Moller Company, Inc., Belgium-Holland Freight Tariff No. 1 and Corrections No. 1 through 53 thereto, and applied from Atlantic Coast Ports of the United States to Ports in Belgium and Holland. There has also been shown in the attached schedule under the heading "Conference Rate" the corresponding rate in effect at the time of the North Atlantic Continental Freight Conference Lines.

This rate comparison clearly and definitely demonstrates the general pattern or rate basis used by Isbrandtsen-Moller Company, Inc., at the time in arriving at the rates shown in the aforementioned tariff (as corrected), namely, Conference rates less ten (10) percent even to one half (½) cent figures, viz:

	Conference Rate	Isbrandtsen Rate
Figs, Dried	$.95	$.85½
Lawn Mowers	.45	.40½
Machinery, Textile	.45	.40½
Oilcloth, Table	.55	.49½

It will also be noted that Isbrandtsen-Moller Company, Inc., followed Conference rate adjustments, less 10%, viz:

	Effective	Conference Rate	Isbrandtsen Rate	Effective
General Cargo	10/16/39	$1.00	$ .90	11/ 6/39
	10/16/39	1.00/1.80	.90/1.62	11/30/39
	12/17/39	1.25/2.25	1.12½	1/31/40
Machinery	10/16/39	1.00/1.80	.90	11/ 6/39
	12/17/39	1.25/2.25	1.00/1.62	11/30/39
			1.12½	1/31/40
			1.12½/2.02½	2/29/40
Tobacco, Leaf	10/16/39	1.50	1.75	11/ 6/39
	11/16/39	2.00	2.00	11/30/39
	12/ 1/39	2.50	2.70	1/15/40
	12/17/39	3.00	3.00	1/31/40
			2.70	2/29/40
Toilet Preparations	10/16/39	1.40	1.26	11/ 6/39
	12/17/39	1.50	1.35	4/15/40

Isbrandtsen-Moller Co., Inc., Tariff and Corrections, as per attached schedule, contained 672 separate tariff listings, 449 of which (more than two-thirds) are exactly ten (10) percent, even to one half (½) cent figures, under the Conference rates in effect at that time.

[fol. 1904]

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Tariff No. 1 Effective November 6, 1939			
Acetate, Amyl	$1.50		$1.20
Acetate, Butyl	1.50		1.20
Acetate, Cellulose	2.40		2.16
Acetone	1.70		1.40
Acid, Boric	1.20		1.08
Acid, Carbolic	1.00		.90
Agricultural Implements	13.00	W/M	11.70
Alcohol, Butyl	1.50		1.20
Alcohol, Isoprophyl	1.50		1.20
Alcohol, Methyl	1.50		1.20
Aluminum	14.00	Ton	12.60
Aluminum Foil	1.00	ft.	.90
Auto Accessories, N. O. S.	.90	ft.	.90
Auto Accessories, Specified	.90	ft.	.81
Auto Parts	.30/.60		.27/.51
Bags, Burlap	1.00		1.00
Bags, hand	1.00	ft.	.90
Bark	2.80		2.52
Barrel, empty ¼ barrels	.55	each	.55
½ barrels	.85	each	.85
Beans, pea	.60		.90
Boiler Tubes, old	14.00	ton	14.00
Brake Fluid	1.00	ft.	.90
Bromine	1.00	ft.	.90
Cabinets, steel filing	.60	ft.	.54
Cement, roofing	1.30		1.17
Cement, rubber	1.20	ft.	1.08
Cereals	1.60		1.44
Chain, steel (Motorcycle)	34.00	ton	30.60
Chewing Gum Base	1.90		1.71
Cigarettes	.70	ft.	.63
Clocks	1.00	ft.	.90
Cocoa Beans	1.40		1.26
Cocoa, Butter	2.00		1.80
Cocoa Powder	1.80		1.62
Compound, Waterproofing	1.60		1.44
Concentrates, Roasted, Molybdenum	25.00	ton	15.30
Cork Discs (Composition)	5.50		4.95
Cotton Collodion	.70	ft.	.63
Cotton Duck	1.00	ft.	.90
Electrical Material	1.00	ft.	.90
Ethyl Fluid	2.60		2.34
Fasteners (Metal Paper)	1.80		1.62
Ferro Molybdenum	1.80		1.62

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Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Tariff No. 1 Effective November 6, 1939			
Ferro Tungsten	24.00	ton	21.60
Ferro Vanadium	2.50		2.25
Figs, Dried	.95		.85½
Film Scrap	1.20	ft.	1.08
Flour	.55		.72
Furniture, Steel Office	.60	ft.	.54
Gasoline	3.00		3.00
General Cargo	1.00	ft.	.90
Glasses, Sun	1.00	ft.	.90
Glycol, Diethylene	2.00		1.80
Grease, Petroleum	.90	100 lbs.	20.00-2240 lbs.
Gum, Powder	1.00	ft.	.90
Hair, cattle	1.70		1.17
Hatters Fur Waste	.....		4.00
Hides, Green Salted in bundles	1.50		1.17
Loose	1.50		1.35
Instruments, Electrical	1.00	ft.	.90
Kapok Waste	1.40		1.20
Ketone	3.00		3.00
Lacquer	1.00	ft.	.90
Lanolin (Wool Grease)	1.00	ft.	.94½-100 lbs.
Lawn Mower	.45	ft.	.40½
Lumber, Oak	.75		.75
Machinery & Parts	1.80		1.62
Machinery, Metal Working (Used)	1.00/1.80		.80/1.44
Machinery, Textile	.45	ft.	.40½
[fol. 1905]			
Machinery, Washing	3.50		1.85
Machinery, Woodworking	1.00	ft.	.90
Machine Parts	1.00	ft.	.90
Meat, Salted Horse	1.00		.90
Metal Scrap (Nickel Bearing)	16.00	ton	14.40
Motors, electric	1.00	ft.	.90
Moulds	1.00	ft.	.90
Oil, Cedarwood	1.40		1.40
Oil, Lubricating	.90	100 lbs.	20.00-2240 lbs.
Oil Cloth, Table	.55	ft.	.49½
Oxide, Nitrous	1.80		1.62
Paint	1.00	ft.	.90
Paper, Blotting	1.90		1.90
Paper, Cover	.....		1.80
Petrolatum	.90	100 lbs.	20.00-2240 lbs.
Phenol	1.00		.90
Phosphate, Tricalcium	1.00	ft.	.90
Phosphate, Trisodium	.55	ft.	.49½
Potassium Bromate	1.80		1.62
Radio Parts	1.00	ft.	.90
Resin, Coal Tar	1.00	ft.	.90
Resin, Synthetic	1.20		1.08
Rubber Footwear	.70	ft.	.63
Rubber Goods, Spec	.90	ft.	.81
Rubber Hose	.65	ft.	.58½

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Tariff No. 1 Effective November 6, 1939			
Rubber Scrap	18.00	ton	18.00
Skins, Goat	4.00		4.00
Soda, Hydrosulfite of	1.80		1.62
Spiegeleisen	18.00	ton	15.60
Sponges	.75	ft.	.67½
Sprinklers, Hose KD	1.00	ft.	.90
Sulphate, Alumina	.....		.90
Tape, Friction	.90	ft.	.81
Tape, Gummed Paper	2.70		2.34
Tires & Tubes	.50	ft.	.45
Tobacco Extract	1.20		1.20
Tobacco leaf	1.50		1.75
Toilet Preparations	1.40	ft.	1.26
Tooth Paste	1.00	ft.	.90
Toys	.50	ft.	.45
Transformers, Electric	1.80		1.62
Triethanolamine	1.00	ft.	.90
Typewriters, Used	.90	ft.	.81
Typewriters, New	.90	ft.	.90
Urea	14.00	ton	14.00
Vacuum Cleaners	.80	ft.	.72
Wax	.90	100 lbs.	20.00 ton
Wax, Carnauba	1.00	ft.	.90
Wax, Paraffine	.90	100 lbs.	20.00 ton
Wheels, Grinding	1.00	ft.	.90

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[fol. 1906]

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction: No. 1 (Page 1) changes to November 30, 1939

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Abalyn	$....		$1.08
Acetate cobalt	1.00	ft.	.90
Acid, butyric	1.00	ft.	.90
Acid, powder, acetyle salicylic	.....	ft.	1.08
Acid tannic	.60	ft.	.63
Advertising matter	.70	ft.	.63
Airplane propellers	1.00/1.80		.90/1.62
Agricultural implements	13.00	W/M	11.70
Aluminum ingots	14.00	ton	12.60
Ammonia gas, anhydrous	2.00		1.80
Apparatus, heat regulating	1.60/1.80		.90/1.62
Apples (boxes-baskets)	.77	ea.	.85½-100#
Apple cores and skins	.95		.85½
Apple, pomace	.95		1.00
Asphalt	14.00	ton	14.00
Automobiles, boxed	.30	ft.	.30
Auto chemical products	1.00	ft.	.90
Auto parts	.30	ft.	.27/.54
Bags, burlap	1.25		1.25
Bags, cotton	1.80		1.62
Bags, twill	.....		1.25
Bagging	.....		.81

Correction No. 2 (Page 2) changes to November 30, 1939

Barrels, empty	$1.00	ea.	1.00
Barrels headings	.90		1.00
Barrel hoops	24.00	ton	24.00
Barrel staves	.90		.90
Batteries, storage	.50/.90		.45/.81
Biscuits	2.20		1.98
Bolts, iron	16.00	ton	14.40
Borax, Granular	1.20		1.08
Brewers grit	.....		.90
Brushes, tooth	.80	ft.	.72
Caps, metal	.65	ft.	.58½
Carbital	1.00/1.80		.90/1.62
Casings, hog	1.00		.90
Casters, iron	1.00/1.80		.90/1.62
Catsup, tomato	1.30		1.17
Cement, furnace	.70		.63
Cement, iron, in cases	.90		.81
Chains, steel	1.80		1.62
Cleanser, porcelain	.55	ft.	.49½
Cocoa cake	.65		.65
Cocoa waste	.75		.75
Coffee green	1.00		.90

Comparison of Conference and Isbrandtsen–Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp–Rotterdam–Amsterdam

Correction No. 2 (Page 2a) changes to November 30, 1939

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Coffee, roasted	$1.60		1.44
Compound, lining NOS	.....	ft.	1.35
Compressors, air	1.00/1.80		.90/1.62
Cotton linters	1.25		1.20
Cotton piece goods	1.00/1.80		.90/1.62
Cotton waste	2.00		1.80

[fol. 1907]

Correction No. 3 (Page No. 3) changes to November 30, 1939

Dental Material	$1.40	ft.	$1.26
Dextrose	.....	100 lbs.	.63
Dichlorodifluorimethane	1.80	100 lbs.	1.62
Drug Sundries	1.20	ft.	1.08
Duplicating Machinery and Supplies	1.00	ft.	.70
Dye Color	.60	ft.	.54
Electrical Appliances	1.00/1.80		.92/1.62
Electrodes, Carbon	1.50	100 lbs.	1.35
Engine, Gas	1.00/1.80		.90/1.62
Film, up to incl. 50'	15.00	ea.	13.50 per case
Up to incl. 100'	20.00	ea.	18.00 per case
Up to incl. 150'	30.00	ea.	27.00 per case
Flooring, Hardwood	1.10	100 lbs.	.85
General Cargo	1.00/1.80		.90/1.62
Glasses, Sun	1.00/1.80		.90/1.62
Grease, lubricating	.90	100 lbs.	20.00 per 2240 lbs.
Grease, Petroleum	.90	100 lbs.	20.00 per 2240 lbs.
Gum, Chewing	.70	ft.	.63
Gum, Karaga	.....	100 lbs.	1.44
Gutta Percha	1.00/1.80		.90/1.62

Correction No. 4 (Page No. 4) Changes to November 30, 1939

Hair, Cattle	$1.70	100 lbs.	$1.53
Hair, Horse, in bales	1.70	100 lbs.	1.70
Handles, Wood Tool	1.10	100 lbs.	1.10
Hardware	1.00/1.80		.90/1.62
Heaters, Air	1.00	ft.	.90
Honey	1.00	100 lbs.	.80
Hops	3.00	100 lbs.	2.70
Hosiery	1.00/1.80		.90/1.62
Incubators	.80	ft.	.72
Instruments N. O. S.	1.00	ft.	.90
Kapok Waste	1.40	100 lbs.	1.10
Lard	1.00	100 lbs.	.90
Leather, artificial	1.00/1.80		.90/1.62
Leather Cloth	1.00/1.80		.90/1.62
Leather Splits	2.90	100 lbs.	2.61
Lumber, Oak	1.00	100 lbs.	1.00

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Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 5 (Page No. 5) Changes to November 30, 1939

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Machinery & Parts	$1.00/1.80		$ .90/1.62
Machinery, Excavating	24.00 W/M		21.60 W/M
Machinery, Grinding	1.00/1.80		.90/1.62
Machinery, Mining	1.00/1.80		.90/1.62
Machinery, Refrigerating	1.00/1.80		.90/1.62
Machinery, Textile	.45/85		.42½/76½
Machines, Adding	1.00/1.80		.90/1.62
Machines, Pressing	1.00/1.80		.90/1.62
Machines, Sewing	.90	ft.	.81
Metal Naphtenate	1.00	ft.	.90
Metal Weatherstrips	1.00/1.80		.90/1.62
Mica Waste	1.20	100 lbs.	1.08
Microscopes	1.40	ft.	1.26
Mints	2.00	100 lbs.	1.80
Monoethlamine	1.00/1.80		.90/1.62
Motorcycles	.60	ft.	.54
Nails, Iron, N. O. S.	24.00	Ton	21.60
Nephalene	3.00	100 lbs.	2.70
Nickel Cathodes	22.00	Ton	18.90
Nuts, Brazil	.....	100 lbs.	1.60
Oil, Aniline	1.00/1.80		.90/1.62
Oil, Mineral	.90	100 lbs.	20.00 per 2240 lbs.

Correction No. 5 (Page 5a) Changes to November 30, 1939

Oil, Motor	.90	100 lbs.	20.00 per 2240 lbs.
Oil, Oleo	1.00	100 lbs.	.90
Oil, Peppermint	1.80	ft.	1.62
Oil, Wormseed	1.80	ft.	1.62
Oilcloth, Table	.55	ft.	.90/1.62

[fol. 1908]

Correction No. 6 (Page No. 6) Changes to November 30, 1939

Paper, abrasive	$1.00/1.80		$ .90/1.62
Paper, blotting	1.90		1.90
Paper cups	.60	ft.	.54
Paper napkins	3.50		3.15
Paper, printing	1.60		1.44
Paper straws	3.50		3.15
Paper tape	1.00/1.80		.90/1.62
Paper, toilet	3.50		3.15
Paste, adhesive	1.60		1.44
Pencils, mechanical	1.00/1.80		.90/1.62
Pitch	14.00	ton	14.00
Plaster of paris	1.00/1.80		.90/1.62
Polishing composition	1.00/1.80		.90/1.62
Porcelain enamel	1.00/1.80		.90/1.62
Potato sticks, in tins	.....		1.98
Printing supplies	1.00/1.80		.90/1.62
Prunes	.95		85½
Pulp, cottonseed	2.50		2.00
Pumps, power	.....		11.70 W/M
Rags	2.00		1.80
Refrigerators, electric	.50	ft.	.45
Rivets, brass	1.80		1.62

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 6 (Page No. 6a) Changes to November 30, 1939

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Roots, hydrastic	$1.20	ft.	$ .90
Rosin	1.20		1.08
Rubber bands	1.00/1.80		.90/1.62
Rubber belts	.90	ft.	.81
Rubber, chlorinated	3.00		2.00
Rubber goods	.90/1.60		.90/1.62
Rubber, liquid (Latex)	1.00/1.80		.90/1.62
Rubber packing	1.60		1.44
Rubber sheets	1.60		1.62
Rubber tubing	.90	ft.	.81
Rutile	16.00	ton	14.40

Correction No. 7 (Page No. 7) Changes to November 30, 1939

Salmon, salted	$1.80		$1.62
Screws	25.00	ton	22.50
Seed, blue grass	2.00		1.80
Seed, clover	1.30		1.17
Service station equipment	.70	ft.	.63
Shaving cream	.55	ft.	.49½
Shellac, gasket	1.00	ft.	.90
Silk, oiled	1.50	ft.	1.35
Skates, roller	.50	ft.	.45
Soap	.55	ft.	.49½
Soda, bichromate of	1.00		.90
Sodium bicarbonate	1.00	ft.	.90
Spark plugs	.90	ft.	.81
Springs, mattress	.60	ft.	.54
Stationery supplies	1.00/1.80		.90/1.62
Steel bars, structural	13.00	ton	13.00
Steel bars, ingots, slabs, plates, strips	13.00	ton	11.70
Steel channels	14.00	ton	10.80
Steel ship plates	12.00	ton	10.80
Steel tubes	13.00	ton	11.70
Steel Wool	.40	ft.	.36
Sulphanilamide	1.00/1.80		.90/1.62
Syrup	.70		.63

Correction No. 7 (Page No. 7a) Changes to November 30, 1939

Tacks, steel	$1.40		$1.26
Talcum powder	1.00/1.80		.90/1.62
Tin oxide	1.00/1.80		.90/1.62
Tinplate	13.00	ton	11.70
Tires & Tubes	.50	ft.	.45
Tire patches	.70/1.40		.90/1.62
Tobacco cuttings	2.00		1.26
Tobacco leaf	2.00		2.00
Tools	1.00/1.80		.90/1.62
Twine Cotton	1.80		1.80

COPY BOUND CLOSE IN CENTER

[fol. 1909]

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 8 (Page No. 8) Changes to November 30, 1939

(All Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Underwear	$1.00/1.80		$ .90/1.62
Utensils	.50/1.00		.90/1.62
Wheels, Grinding	1.00/1.80		.90/1.62
Window Cleaners	1.00/1.80		.90/1.62
Wire, Aluminum	1.60	100 lbs.	1.44
Wire Bars	13.00	ton	11.00
Wire, Insulated	1.00/1.80		.90/1.62
Witch Hazel	1.40	ft.	.90/1.62
Wood Pulp Board	.85	100 lbs.	1.00
Wrenches	1.00/1.80		.90/1.62

Correction No. 9 (Page No. 3) Changes to December 31, 1939

Diphentene, in Drums	$....	ea.	$7.00

Correction No. 10 (Page No. 4) Changes to December 31, 1939

Lumber, Pine	1.50	100 lbs.	$1.25

Correction No. 11 (Page No. 5) Changes to December 31, 1939

Oil, Pine, in drums	$1.90	100 lbs.	$7.00 each

Correction No. 12 (Page No. 6) Changes to December 31, 1939

Rosin	$1.50	100 lbs.	$1.20

Correction No. 13 (Page No. 7) Changes to December 31, 1939

Solvenol, in drums	$....		$7.00 each
Terposol, in drums			7.00 each
Turpentine, in drums and barrels	1.90	100 lbs.	7.00 each

Correction No. 14 (Page No. 1) Changes to January 15, 1940

Atomizers	1.25	ft.	$1.12½
Auto Parts	.50	ft.	.40/.80
Bags, Burlap	1.80	100 lbs.	1.50
Bags, Cotton	1.80	100 lbs.	1.80

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 15 (Page No. 2) Changes to January 15, 1940

(All Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Barrels, Empty, K. D.	$2.25	ea.	$1.25-100 lbs.
Beans, Pea	1.25	100 lbs.	1.00
Camphor, Ground	1.25	ft.	1 12½
Cotton Waste, High Density	2.00	100 lbs.	1.12½
Cotton Linter Pulp	3.50	100 lbs.	3.15
Cottonseed Pulp	3.50	100 lbs.	3.15

Correction No. 16 (Page No. 3) Changes to January 15, 1940

Electric Shavers	$....	ft.	.90
Electrical Apparatus	1.25	ft.	1.12½
Ethylene Dichloride	1.25	ft.	1 12½
Fish Meal, Mixed	1.40	100 lbs.	.90

Correction No. 17 (Page No. 4) Changes to January 15, 1940

Hair, Cattle	$1.75	100 lbs.	2.02½
Kerosene	3.75	100 lbs.	2.70
Lawn Mowers & Parts	.60	Ft.	.52
Lead	15.50	Ton	12.50
Lead, in pigs	15.50	Ton	11.25
Leather, glazed Black Kid	1.75	Ft.	1.35
Lumber, Ash	1.25	100 lbs.	1.12½
Lumber, Basswood	1.50	100 lbs.	1.35
Lumber, Hickory	1.25	100 lbs.	1.12½
Lumber, Oak	1.25	100 lbs.	1.57½
Lumber, Poplar	1.50	100 lbs.	1.35
Lumber, Walnut	1.25	100 lbs.	1.12½

[fol. 1910]

Correction No. 18 (Page 5) changes to January 15, 1940

Machines, tabulating	$1.25	ft.	$1.12½
Meat, salted horse	1.50		1.35
Meat juice	1.50	ft.	1 12½
Mica waste	1.90		1.35
Oil, lubricating	1.40		1.26
Oil, Medicinal	1.50	ft.	1.12½
Oil, mineral	1.40		1.26
Oil, Pine	1.90		1.35
Ore, iron	20.00	ton	14.40

Correction No. 19 (Page 6) changes to January 15, 1940

Paper, blotting	$2.40-100#		$1.25 ft.
Petrolatum	1.40		1.26
Pig iron	13.00	ton	11.70
Press parts, printing	1.25	ft.	1.12½
Resin, synthetic	1.50		1.35
Rubber Goods, NOS	1.15	ft.	1.03½
Rubber packing	1.15	ft.	.58½

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Comparison of Conference and Isbrandtsen–Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp–Rotterdam–Amsterdam

Correction No. 20 (Page 7) changes to January 15, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Seed, red top	$2.15		$1.53
Skates, roller	.55	ft.	.65
Spiegeleisen	22.50	ton	16.20
Steel plates	17.00	ton	11.70
Steel plates, mill & sheer	17.00	ton	12.60
Stencil sheets	1.25	ft.	1.12½
Tobacco cuttings	3.00		2.00
Tobacco leaf	3.00		2.70
Turpentine	1.90		1.80

Correction No. 21 (Page 8) changes to January 15, 1940

Valves and parts	$1.25	ft.	$1.62–100 lbs.
Wax, yellow petroleum	.....		1.00–100 lbs.
Wheels, grinding	2.25		2.02½

Correction No. 22 (Page 1) changes to January 31, 1940

Abrasive Grain, in kegs	$1.45		$1.30½
Acetate Cobalt	1.25	ft.	1.12½
Acetyle Salicylic	.....		1.08 ft.
Agricultural Implements	20.00	W/M	14.40 per 40 cft.
Alcohol	2.50		.81
Aluminum, Granulated	38.00	ton	30.00
Asphaltum, Crude	25.00	ton	16.00
Autos, Trucks & Parts for Assembly, K. D. Bd.	.65/1.15		.58½/1.03½

Correction No. 23 (Page 2) changes to January 31, 1940

Barrel Headings	$1.50		$1.57½
Barrel Hoops	31.00	ton	24.30
Barrel staves	1.50		1.57½
Batteries, Storage	.95	ft.	.85½
Beans, Dried	1.25		1.12½
Belts	1.25	ft.	1.12½
Belts, Sanitary	1.25	ft.	1.12½
Bottle Openers	2.25	100#	2.02½
Brake Lining	.65	ft.	.45
Brass Scrap	16.00	ton	15.30
Bristles	2.75		2.47½
Bromine	1.25	ft.	1.12½
Cans, Empty Oil	.75	ft.	.72
Carbon Tetrachloride	1.75		1.26
Cassia	3.50		3.15
Cassis, Lignea	3.50		2.50
Casters, iron	1.25	ft.	1.12½
Cement, Furnace	.90		.81
Cement, Steel Roofing	1.25		1.12½
Cement, Rubber	1.50	ft.	1.12½
Cigarettes	1.00	ft.	.75
Cinnamon & cloves	4.00		3.15

[fol. 1911]

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 23 (Page No. 2a) Changes to January 31, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Clocks	$1.25	ft.	$1.12½
Copper Scrap	16.00	ton	15.30
Cotton Linters (Pulp)	3.50	100 lbs.	3.15

Correction No. 24 (Page No. 3) Changes to January 31, 1940

Dichlorodifluoromethane	$2.25	100 lbs.	$2.02½
Elastic Webbing	1.25	Ft.	1.12½
Electrical Appliances	1.25	Ft.	1.12½
Emulsion	....	Ft.	.22½
Ethyl Fluid	3.25	100 lbs.	3.00
Files	2.25	100 lbs.	2.02½
Fishing Lines	1.25	Ft.	1.12½
Fruits, Dried	1.50	100 lbs.	1.35
Furniture, Steel Office	.75	Ft.	.81
General Cargo	1.25	Ft.	1.12½
Glasses, Sun	1.25	Ft.	1.12½
Grease, Lubricating	1.40	100 lbs.	1.26
Gum, Tragacanth	2.75	100 lbs.	2.47½

Correction No. 25 (Page No. 4) Changes to January 31, 1940

Hair, Horse	$3.75	100 lbs.	$1.53 ft.
Handles, Wood Tools	1.75	100 lbs.	1.57½
Hardware	1.25	ft.	1.12½
Heaters, Auto	1.25	ft.	1.12½
Hides, Dry Cattle	2.10	100 lbs.	1.89
Hides, G. S. Cattle	1.75	100 lbs.	1.57½
Honey	1.75	100 lbs.	1.57½
Hosiery	1.25	ft.	1.12½
Instrument, Musical	1.25	ft.	1.12½
Lacquer	1.25	ft.	1.12½
Lamp Bases	1.25	ft.	1.12½
Lawn Mowers, Power Driven	1.25	ft.	1.12½
Leather, Sole Split	3.65	100 lbs.	3.28½

Comparison of Conference and Isbrandtsen–Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp–Rotterdam–Amsterdam

Correction No. 26 (Page No. 5) Changes to January 31, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Machinery & Parts	$1.25	ft.	$1.12½
Machinery, Lathe	1.25	ft.	1.12½
Machinery, Rolling Mill	1.25	ft.	1.12½
Machinery, Parts, Screw	1.25	ft.	1.12½
Machines, Adding	1.25	ft.	1.12½
Machines, Parts	1.25	ft.	1.12½
Machines, Washing	.50	ft.	.45
Medical Preparations	1.50	ft.	1.12½
Metal Naphtenate	1.25	ft.	1.12½
Monel Scrap	27.50	Ton	24.75
Motors Electric	1.25	Ft.	1.12½
Moulds	1.25	ft.	1.12½
Nickel Cathodes	28.00	Ton	25.20
Nutmegs	2.00	100 lbs.	1.80
Oilcake, Linseed	.85	100 lbs.	.70
Oil, Lubricating	1.40	100 lbs.	1.26
Oil, Pine Tar, in drums	1.90	100 lbs.	7.50 each
Oil, Soya Bean	1.50	100 lbs.	1.40

Correction No. 27 (Page No. 6) Changes to January 31, 1940

Paint, in Oil	$1.25	ft.	1.12½
Paint, Liquid	1.25	ft.	1.12½
Paint Paste	.....		.90/1.62
Pencil Sharpeners	1.25	ft.	1.12½
Pepper, White	2.00	100 lbs.	1.80
Phosphorous	3.75	100 lbs.	3.00
Pig Iron	13.00	ton	11.40
Pimento, Jamaica	2.25	100 lbs.	1.57½
Plaster, Rubber Adhesive	1.50	ft.	1.35
Radios and Parts	1.00	ft.	1.12½
Rags, up to & incl. 110′ per 2240 lbs.	3.25	100 lbs.	1.80
up to & incl. 150′ per 2240 lbs.	3.25	100 lbs.	2.70
Rosin	1.50	100 lbs.	1.35
Rubber Boots	.90	ft.	.90
Rubber Chlorinated	3.75	ft.	3.37½
Rubber Hose	1.15	ft.	1.03½

[fol. 1912]

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1946 to Antwerp-Rotterdam-Amsterdam

Correction No. 29 (Page No. 7) Changes to January 31, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Seed, blue grass	$2.50		$2.25
Seed, Timothy	1.65		1.50
Shellac, Gasket	1.25	ft.	1.12½
Skins, goat	5.00		4.50
Soda, hydrosulfite of	2.25		2.02½
Solder	37.50	ton	27.00
Spark plugs	1.25	ft.	1.12½
Steel beams	17.00	ton	15.30
Steel forgings	27.00	ton	24.30
Steel ingots	16.00	ton	14.40
Steel sheet	17.00	ton	15.30
Steel ship plates	17.00	ton	15.30
Tape, friction	1.25	ft.	1.12½
Terposol, in drums	.....		7.50 each
Tinplate	16.00	ton	14.40
Tires and tubes	.65	ft.	.58½
Tobacco, leaf	3.00		3.00
Tools	1.25	ft.	1.12½
Tooth paste	1.50	ft.	1.12½
Toys	.55	ft.	.49½
Transformer, electric	1.25	ft.	1.12½
Turpentine, in drums	1.90	100 lbs.	7.50 each

Correction No. 29 (Page No. 8) Changes to January 31, 1940

Varnish	$1.25	ft.	$ .90
Watercooler	.65	ft.	.55
Wax	1.40		1.26
Wax, paraffine	1.40		1.26
Wax, vegetable	1.25	ft.	1.12½
Wheat	.....		.64

Correction No. 30 (Page No. 1) Changes to February 29, 1940

Acetone	$2.50		$1.75
Advertising matter	.90	ft.	.81
Agricultural implements	26.00 W/M		18.00 per 40 cu. ft.
Aluminum ingots	18.00	Ton	16.20
Apples, in barrels	2.00		1.80 each
Asphaltum, crude	25.00	Ton	20.00 per 2240 lbs.
Auto chemical products	1.25	ft.	1.12½
Bags Burlap (Second hand)	1.75		1.57½

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Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 31 (Page No. 2) Changes to February 29, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Barrel headings	$1.50		$1.25
Barrel Hoops	31.00	ton	24.00
Barrel staves	1.50		1.25
Biscuits	2.75		2.75
Chalk, billiard	2.25		2.02½
Cocoa beans	2.00		1.80
Coffee, green	1.50		1.35
Corks (Discs)	7.00		6.30
Cotton Collodion	.90	ft.	.81

Correction No. 32 (Page No. 3) Changes to February 29, 1940

Ethyl Fluid	$3.25		$2.70

Correction No. 33 (Page No. 4) Changes to February 29, 1940

Hardware	$1.25/2.25		$1.12½/2.02½
Lamps, oil burners	1.25	ft.	1.12½
Lawn mowers & parts, power driven	1.25	ft.	.99
Leather, artificial	1.25	ft.	1.00
Leather remnants, artificial	1.25	ft.	1.12½/2.70
Leaves	3.50		1.80
Lumber, oak	1.25		1.25

Correction No. 34 (Page No. 5) Changes to February 29, 1940

Machinery & parts	$1.25/2.25		$1.12/2.02½
Medical Preparations	1.50	ft.	1.35
Mints	2.50		2.25
Naptha, Petroleum	3.75		2.70

[fol. 1913]

Correction No. 35 (Page No. 6) Changes to February 29, 1940

Paper, Coated	$1.25	ft.	$1.12½
Phosphate, Trisodium	.70	ft.	.50
Rubber Clothing	1.15	ft.	1.03½

Correction No. 36 (Page No. 7) Changes to February 29, 1940

Service Station Equipment	$1.25	ft.	$ .81
Steel Ingots	16.00	ton	11.40
Syrup, Sugar	1.25	100 lbs.	1.12½
Tape Friction	1.15	ft.	1.03½
Tire Repair Material	1.15	ft.	1.03½
Tobacco Cuttings	3.00	100 lbs.	2.70
Tobacco Leaf	3.00	100 lbs.	2.70

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 37 (Page No. 8) Changes to February 29, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Vacuum Cleaners & Parts	$1.00	ft.	$ .90
Valves and Parts	1.25	ft.	1.12½
Wax, Carnauba	1.25	ft.	1.12½
Woodpulp, Board	1.10	100 lbs.	1.75

Correction No. 38 (Page No. 1) Changes to March 15, 1940

Acid, Carbolic	$1.25	100 lbs.	1.12½
Apples, in baskets	1.00	each	.90 each

Correction No. 39 (Page No. 2) Changes to March 15, 1940

Beans, White	$1.25	100 lbs.	$1.12½
Biscuits	2.75	100 lbs.	2.47½
Bronze Ebony	.....		16.20 2240 lbs.
Cigaretts	1.00	ft.	.90
Cocoa Cake	1.00	100 lbs.	1.00
Cocoa Dust Waste	1.00	100 lbs.	.90
Color, Chemical Pigment	1.25	ft.	1.12½
Compressors, Air	1.25	ft.	1.12½
Confectionery	2.50	100 lbs.	2.25
Copper Scrap	17.00	ton	16.20
Cork Discs, Composition	7.00	100 lbs.	6.30
Cork Sheets	1.00	ft.	.90
Cotton Clothing	1.25	ft.	1.12½
Cotton Piece Goods	1.25	ft.	1.12½

Correction No. 40 (Page No. 3) Changes to March 15, 1940

Dimethyl Aniline	$ .75	ft.	$ .67½
Electrical Material	1.25	ft.	1.12½
Enamel	1.25	ft.	1.12½
Engines, Gas	1.25	ft.	1.12½
Gasoline	3.75	100 lbs.	1.48½

Correction No. 41 (Page No. 4) Changes to March 15, 1940

Hair, Horse	$3.75	100 lbs.	$3.37½
Heater, Electric Water	1.25	ft.	1.12½
Insecticide, Agricultural	2.15	100 lbs.	1.80
Iron, Sheet	21.00	ton	15.30
Leaves	3.50	100 lbs.	1.08 ft.

Correction No. 42 (Page No. 5) Changes to March 15, 1940

Machinery, Washing	$ .50	ft.	.43½
Metal Scrap, Nickel Bearing	20.00	ton	18.00
Oil, Castor	1.40	100 lbs.	1.26
Oilcake, Linseed	.85	100 lbs.	.76½
Ore, Antimony	30.00	Ton	21.60
Oxide, Iron	1.75	100 lbs.	1.57½

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[fol. 1914]

Comparison of Conference and Isbrandtsen Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 43 (Page No. 6) Changes to March 15, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Paper, toilet	$4.40		$3.96
Phenol, amyl	1.25		1.12½
Plaster of Paris	1.25	ft.	1.12½
Plumbing supplies	1.25	ft.	1.12½
Printing supplies	1.25	ft.	1.12½
Refrigerators & parts, electric	.75	ft.	.67½
Rosin	1.50		1.25
Rubber, asphalt mineral	25.00	ton	22.50
Rubber belting	1.15	ft.	1.03½
Rubber boots	.90	ft.	.81
Rubber footwear	.90	ft.	.81
Rubber scrap	22.50	ton	20.25

Correction No. 44 (Page No. 7) Changes to March 15, 1940

Skins, raw fur	$2.15	ft.	1.53
Sprinklers, Hose, K. D.	1.25	ft.	1.12½
Stearine	1.50		1.35
Steel bars	16.00	ton	14.40
Steel channels	17.00	ton	15.30

Correction No. 45 (Page No. 8) Changes to March 15, 1940

Underwear	$1.25	ft.	$1.12½
Wire, nickel chrome	1.25/2.25		24.30-2240 lbs.
Woodpulp, chemical	1.50		1.00
Wrenches	1.25	ft.	1.12½

Correction No. 46 (Page No. 1) Changes to April 15, 1940

Abrasive Cloth	$2.25		$2.02½
Auto Accessories, N. O. S.	1.25	ft.	1.12½
Auto Accessories, Specified	1.25	ft.	.67½

Comparison of Conference and Isbrandtsen-Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp-Rotterdam-Amsterdam

Correction No. 47 (Page No. 2) Changes to April 15, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Bags, Hand	$1.25	ft.	$1.12½
Barrels, Empty K. D.	1.25	ft.	1.12½
Barrel Headings	1.50		1.57½
Barrel Hoops	29.00	ton	24.30
Barrel Staves	1.50		1.57½
Battery Parts	2.25		2.02½
Blades, Hacksaw	2.25		2.02½
Brake Fluid	1.25	ft.	1.12½
Cement, Iron	1.15		1.03½
Cement, Rubber	1.50	ft.	1.35
Chewing Gum base	2.40	100 lbs.	.76½ ft.
Chlorpicrin Insecticide	2.25	100 lbs.	2.02½
Cigarettes	1.00	ft.	.75
Cocoa Cake	1.00		.90
Compound, Cleaning	.85	ft.	.76½
Compound, Metal Cutting	1.25	ft.	1.12½
Copper Phosphor	25.00	ton	22.50
Cotton Waste, High Density	2.00		1.80

Correction No. 48 (Page No. 3) Changes to April 15, 1940

Dental Material	$1.75	ft.	$1.57½
Dyestuffs	.75	ft.	.67½
Extracts	1.25		1.12½
Ferro Manganese	22.50	ton	22.50
Ferro Vanadium	3.15		2.83½
Fish Meal, Mixed	1.40		1.26
Fur Waste	2.15	ft.	1.53
Furniture, Steel Office	.75	ft.	.67½
Gum Synthetic	1.25	ft.	1.12½

Correction No. 49 (Page No. 4) Changes to April 15, 1940

Hog Bungs	$1.50		$1.35
Ketone	3.75		2.70
Leather, Artificial	1.25	ft.	1.12½
Leather cloth	1.25	ft.	1.12½
Lumber, Oak	1.25		1.35

[fol. 1915]

Correction No. 50 (Page No. 5) Changes to April 15, 1940

Machines, Stapling	$1.25	ft.	$1.12½
Metal, Babbitt	2.50	100 lbs.	2.25
Metal Scrap (Nickel Bearing)	20.00	Ton	24.30
Metal Weatherstrips	.....	Ft.	.81
Metallic Packing	1.25	Ft.	1.12½
Naphtha, Petroleum	3.75	100 lbs.	3.37½
Oil, Lubricating	1.40	100 lbs.	1.26
Oil, Oiticica	2.25	100 lbs.	2.02½
Oil, Polymerized	.....	100 lbs.	1.80

COPY BOUND CLOSE IN CENTER

Comparison of Conference and Isbrandtsen Moller Co., Inc., Rates From November 6, 1939 to April 30, 1940 to Antwerp Rotterdam-Amsterdam

Correction No. 51 (Page No. 6) Changes to April 15, 1940

(Rates per 100 lbs., except as noted)

Commodity	Conference Rate		Isbrandtsen Rate
Paint	$1.25	ft.	$1.12½
Paint Paste	1.25	ft.	1.12½
Paper, Abrasive	2.25	100 lbs.	2.02½
Paper, Blotting	2.40	100 lbs.	2.16
Plaster, Adhesive	1.25	ft.	1.12½
Polish, Shoe	1.25	ft.	1.12½
Potassium Iodide	1.25	ft.	1.12½
Potato Sticks in Tins	2.75	100 lbs.	2.47½
Powder Puffs	1.25	ft	1.12½
Press Parts, Printing	2.25	100 l	2.02½
Pumps	1.25	ft.	1.12½
Pyridine	1.25	ft.	1.12½
Ranges, Electric	.90	ft	.81
Ranges, Gas	.90	ft.	.81
Rayon Piece Goods	1.25	ft.	1.12½
Refrigerators & Parts, Electric	.75	ft.	1.12½
Rubber Bands	1.25	ft.	1.12½
Rutile	20.00	ton	18.00

Correction No. 52 (Page No. 7) Changes to April 15, 1940

Scales, Iron	$1.25	ft.	$1.12½
Screws	30.00	Ton	25.20
Shade Rollers	.75	ft.	.67½
Skates, Roller	.55	ft.	.49½
Stationery Supplies	1.25	ft.	1.03½
Steel Angles	19.00	Ton	15.30
Steel Bars	18.00	Ton	15.30
Talcum Powder	1.25	ft.	1.12½
Tape, Gummed Paper	3.25	100 lbs.	2.92½
Tire Repair Material	1.25	ft.	1.12½
Tobacco Scrap	3.00	100 lbs.	2.70
Tobacco Siftings	3.00	100 lbs.	2.70
Toilet Preparations	1.50	ft.	1.35
Tools	2.25	100 lbs.	2.02½
Tractors & Parts, Agricultural	26.00	W/M	26.00

Correction No. 53 (Page No. 8) Changes to April 15, 1940

Typewriters, New	$1.25	ft.	$1.12½
Varnish	1.25	ft.	1.12½
Wallboard	1.65	100 lbs.	1.48½
Wearing Apparel	1.25	ft.	1.12½
Wire, Galvanized Iron	18.00	ton	16.20
Wire Rope, Steel	33.00	ton	29.70
Woodpulp	1.50	100 lbs.	1.35
Woodpulp, Chemical	1.50	100 lbs.	1.10

Ton — Per 2240 lbs.
Ft. — Per cubic foot.
27/51 — Stands for 27¢ cubic foot or 51¢ per 100 lbs., ship's option.

[fol. 1916] EXHIBIT "12-C"

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE

80 Broad Street, New York 4, N. Y.

LIST OF ISBRANDTSEN-MOLLER CO. INC. CONTRACT RATES FOR PERIOD JANUARY 2, 1937 TO AUGUST 31, 1939 TO ANTWERP-ROTTERDAM-AMSTERDAM

Attached is a list of 176 CONTRACT RATE items on file with the United States Maritime Commission and which appeared in Isbrandtsen-Moller Co. Inc. European Contract Tariff No. 1, effective *January 2, 1937* and Corrections No. No. 1 through No. 58 (dated September 15, 1939) thereto. These contract rates applied from Philadelphia and New York to ANTWERP-ROTTERDAM-AMSTERDAM. While this contract Tariff No. 1 also contained contract rates to Havre, United Kingdom, Scandinavian and German Base Ports, we have only listed the contract rates to ANTWERP-ROTTERDAM-AMSTERDAM.

Next attached is copy of Isbrandtsen-Moller Co. Inc. contract form as appeared in their European Contract Tariff No. 1 on file with the United States Martime Commission.

There has also been shown in the attached list after each contract rate item the respective NON-CONTRACT rate as appeared in Isbrandtsen-Moller Co. Inc. European Freight Tariff No. 2, effective January 31, 1938 and Corrections No. 1 through No. 617 (dated October 14, 1939—changes to September 30, 1939) thereto and on file with the United States Maritime Commission. In the attached list under the heading "CONFERENCE RATE" the corresponding Conference rate in effect as of September 17, 1939 has also been shown. Where Conference had no contract-non-contract rate basis on the item in question, we have so indicated by the word "NONE" but have inserted the Conference Tariff rate in effect at that time under the heading "NON CONTRACT OR TARIFF."

Provision for NON-CONTRACT RATES on these 176 contract rate items was covered by the following note on the second sheet (not identified by letter or page number) in Isbrandtsen-Moller Co. Inc. European Freight Tariff No. 2, effective January 31, 1938 and corrections No. 1 through

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No. 617 (dated October 14, 1939—changes to September 30, 1939):

"NON-CONTRACT RATES

"(Contract Rates are listed in the European Contract Tariff No. 1 of the Isbrandtsen-Moller Company, Inc. Contract Rates are available to all shippers complying with the prescribed conditions.)"

It will be noted that on a great many CONTRACT rate items Isbrandtsen-Moller Co. Inc. had no appropriate NON-CONTRACT rate for the particular item. In all such cases the non-contract rate, therefore, would have been the general cargo rate, i.e., $.56 2/3 per cubic foot, as per Isbrandtsen-Moller Co. Inc. European Freight Tariff No. 2.

[fol. 1917] *COPY*

ISBRANDTSEN-MOLLER COMPANY, INC.

26 Broadway, New York

CONTRACT FORM

Gentlemen:

We confirm arrangement agreed upon covering your shipments, commodities and ports shown below, during the period from ———— to ————. You have agreed to route all of your shipments on vessels operated by the Isbrandtsen Moller Company, Inc., and we have agreed to protect the following rates:

You shall have the option of selecting any of the vessels operated by the Isbrandtsen-Moller Company, Inc., subject to specific agreement between us as to quantity to be shipped on the carrying vessel, and the port or ports of loading, call and discharge. Arrangements for the actual carriage of specific shipments of the commodity or commodities covered by this agreement are to be made individually with us, and the shipments shall be subject to all the terms, conditions and exceptions expressed in the permits, dock receipts, mate's receipts and regular form of bill of lading

of the Isbrandtsen-Moller Company, Inc., at the time of the shipments.

In the event of war or hostilities between countries or peoples, affecting or likely to affect vessel (s) or cargo (es) in the trade covered herein, either party shall have the option of cancelling this agreement.

It is understood that if you have shipments which, on account of urgent delivery requirements, cannot be held and sent with our next sailing, it will not be counted a breach of this agreement for you to send such shipments on other lines, provided we are notified of such instances and that the prevailing rates of such other lines are paid.

We are sending this Agreement to you in ..... and ask you to sign and return one copy to us.

Your very truly, Isbrandtsen-Moller Company, Inc.,
M. S. Crinkley, Traffic Mgr.

Accepted: —— ——.

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[fol. 1918]

List of Isbrandtsen-Moller Co. Inc. Contract Rates per Period January 2, 1927 to August 31, 1939 to Antwerp-Rotterdam-Amsterdam

Commodity	Isbrandtsen Rate Contract	Isbrandtsen Rate Non Contract	Conference Rate* Contract	Conference Rate* Non Contract or Tariff
	(Rates per 100 lbs. except as noted)			
Abrasive Grain, in bags	$.41¼	$.40⅜	$.50	$.65
Abrasive Grain (2000#)	9.48⅜	....	.50	.65
Acetate, Amyl	.50	.60	.60	.75
Acetate, Butyl	.50	....	.60	.75
Acetone	.50	....	none	.75
Acid, Boric ton	7.00	....	none	.60
Acid, Chromic	.60	....	none	.50/90
Agricultural Insecticides	.54	.72¼	none	.85
Alcohol, Butyl	.55	....	.60	.75
Alcohol, Industrial	.50	....	.60	.75
Asbestos Board	.40	.76½	none	.90
Asbestos Cement	.45	....	none	.70
Asbestos Fibre (2000#)	4.90	.35	.40	.50
Asbestos Fibre Waste ton	4.40	....	.30	.45
Asbestos Pipe Covering	.70	....	none	1.00
Asphalt ton	5.00	....	7.00 ton	9.00
Asphalt Roofing	.40	.40	7.00 ton	9.00
Asphalt Shingles	.35	....	none	.65
Auto Accessories specified	.37⅛/.66	.38¼/.68	none	.45/80
Auto Product, Chemical	.25/55	....	none	....
Bags, Hand ft.	.30	.42½/76½	none	.50/90
Bags, Overnight ft.	.41¼	.42½/76½	none	.50/90
Batteries, Storage ft.	.20	.29⅓	.25/45	.30/60
Benzol, Nitro	.70	....	none	1.50
Boiler Tubes, old ton	6.30	7.00	none	8.00
Bottle Goods	.72¼	.89¼	none	....
Borax ton	7.00	....	none	.60
Boxes, Paper	.90¼	....	none	1.10
Brake Lining	.21/42	....	.15½/31	.20½/41
Brushes, Tooth ft.	.33	.34	none	.40
Burners, Mech., Coal Stoker ft.	.35	....	none	.50/90
Cabinets, File ft.	.16½	....	.30	.35
Cabinet, Steel Filing K.D. ft.	.25	....	.35/65	.40/75
Calcium Gluconate ft.	.35	.42½/.76½	none	.50/90
Canned Goods	.45	....	none	.55
Carbon Tetrachloride	.40	....	none	.70
Cement ton	5.50	....	5.00	6.50
Cement Furnace	.25	....	none	.35
Cement, Magnesia	.35	....	none	.80
Cement, Magnesite	.35	....	none	....
Cement, Roofing, in drums ton	7.50	.42½	none	.50
Cement, Roofing, in pails ton	8.50	....	none	.65
Cement, Rubber ft.	.49½	.51	none	.60
Cigarettes ft.	.27½	....	.35	.45/80
Clay	.25	....	none	.35
Clocks ft.	.41¼	....	none	.50/90
Cloth, Tontine Shade ft.	.22½	....	none	....
Cocoa Beans	.55	....	none	.70
Coffee	.38	....	.50	.55
Coffee, Canned	.59½	....	none	.70
Condiments	.46¾	....	none	.65
Cork Discs	1.90	3.12	none	2.75

List of Isbrandtsen-Moller Co. Inc. Contract Rates per Period January 2, 1927 toA gust 31, 1939 to Antwerp-Rotterdam-Amsterdam

Commodity	Isbrandtsen Rate		Conference Rate*	
	Contract	Non Contract	Contract	Non Contract or Tariff
	(Rates per 100 lbs. except as noted)			
Cotton Cloth, Impregnated..ft.	.23 3/8	.59 1/2	none	
Cotton, Collodian.....ft.	.30	....	none	.35
Earth, Infusorial.....	.30	....	none	.35
Elec. Material.....	.41 1/4/74 1/4	....	none	.50/.90
Fabrikoid Cloth.....ft.	.23 3/8		none	
Fabrikoid Leather.....ft.	.35	.42 1/2/76 1/2	none	
Fabrikoid Tablecloth.....ft.	.20	....	.27 1/2	.32 1/2
Fibre Sheets.....	.61 7/8	....	none	.75
Files.....	.41 1/4/74 1/4	....	none	.50/.90
Firebrick.....ton	7.00	....	none	8.00
Flour, in packages.....	.31 1/2	....	.25	.30
Frames, Winding & Spinning (W/M)	10.75	11.50	.22 1/2/42 1/2	.50/.90
Fumigator Soil.....	.42 1/2	....	none	
Furniture, Steel Office.....ft.	.25	....	.30	.35
Furniture Stock.....ft.	.28 1/8	....	none	.35/.65
Gas Ranges.....ft.	.28 7/8	.38 1/4/.68	.35	.45/.80
[fol. 1919]				
General Cargo.....	.41 1/4/74 1/2	.56 2/3	none	.50/.90
Glue, Dry.....	.66	....	none	.80
Graphite.....	.45 3/8	....	none	.75
Grease, Inedible.....ton	6.50	....	.52 1/2	.62 1/2
Grease, Inedible, Winter Rate	.25-13/20	....	.33 1/2	.62 1/2
Grease, Lube.....bbl.	1.50	.51	.42 1/2	.55
Grease, Petroleum.....	.36	....	.42 1/2	.55
Hair, Camel.....	.85	....	none	
Handles, Lawn Mower.....	.45 3/8	.51	.22 1/2 ft.	.25 ft.
Handles, Wood Tool.....	.45 3/8	.46 3/4	.55	.70
Insulating Blocks.....	.50	....	none	
Juices, Canned Fruit.....	.72 1/4	....	none	.80
Kleenex.....	1.25	1.48 3/4	1.75	2.10
Lawn Mowers.....ft.	.18	....	.22 1/2	.27 1/2
Power Driven.....ft.	.41 1/4	....	none	.50/.90
Lead, White.....	.40	.40	none	.55
Lead, White & Red.....	.45	.40	none	.55
Leather, Artificial.....ft.	.35	....	none	.50/.90
Leather, Finished.....ft.	.60	....	none	.75
Leather Goods.....ft.	.35	....	none	.50/.90
Leather Scrap.....ft.	.27	.51	none	.50
Leather Waste Scrap.....	.40	.42 1/2	none	.50
Litharge.....	.40	....	none	.55
Looms & Parts.....ft.	.32 1/2	....	none	
Machines, Cutting Greasing..ft.	.30		none	.50/.90
Machinery, Dish Washing...ft.	.35	.42 1/2/76 1/2	none	.50/.90
Machines, Ironing.....ft.	.33	.34	.40	.50/.90
Machinery, Mining.....W/M	10.20	....	.40/.75	.50/.90
Machinery, Second Hand, to be repaired & rebuilt at destifation.....	.32 1/2/.65		none	
Machinery, Textile Winding..ft.	.32 1/2	.20 1/4	.22 1/2/42 1/2	.50/.90
Machinery, Used.....	.35/.70		none	
Machinery, Washing (2000#)	16.99 1/2	17.51	1.03	1.75
Machinery, Woodworking...ft.	.41 1/4	....	none	.50/.90
Medicines.....ft.	.49 1/2	.68	none	.60/1.10
Metal Babbitt.....ton	14.00	.85	none	1.00

List of Isbrandtsen-Moller Co. Inc. Contract Rates per Period January 2, 1927 toA gust 31, 1939 to Antwerp-Rotterdam-Amsterdam

Commodity	Isbrandtsen Rate		Conference Rate*	
	Contract	Non Contract	Contract	Non Contract or Tariff
	(Rates per 100 lbs. except as noted)			
Motors, Electric ft.	.36	....	none	.50/90
Motors, Outboard ft.	.41¼	.36⅛	none	.50/90
Nickel Dust ton	4.50	....	none	....
Nitrate, Barium	.50	....	none	....
Oil, Essential ft.	.72¼	....	none	.90
Oil, Lubricating	.36	....	.42½	.55
Oil, Lube, in cases, cartons, quarter drums	.32½	....	.42½	.55
Oil, Lubricating in drums Ea.	1.65	....	1.90	2.50
Oil, Lubricating, in half drums Ea.	1.00	....	1.15	1.45
Oil, Mineral, non-medicinal, in drums Ea.	1.65	....	1.90	2.50
Oil, Peppermint ft.	.74½	1.02	none	.90
Oilcloth ft.	.18	....	.27½	.32½
Oilcloth, other than Floor ft.	.22⅝	.31	.27½	.32½
Paper, Abrasive	.75	....	none	.90
Paper, Building	.50	.35	none	.75
Paper Coated	.80	.42½/.76½	none	....
Paper Hats ft.	.20	.42½/76½	none	.35
Paper Napkins	1.25	....	1.75	2.10
Paper, Roofing	.35	.55¼	none	.65
Paper, Wrapping	.49½	.85	none	.60
Paper, Wrapping, Common Kraft	.33	.34	none	.40
Petrolatum	.36	....	.42½	.55
Pharmaceutical Products ft.	.41½	.51	none	.60/1.10
Phosphate, Tri Sodium W/M	9.35	.23⅜/42½	none	.27½/.50
Plaster, Adhesive ft.	.37⅛	.42½/76½	none	.50/90
Potash, Bichromate	.40	....	none	.50
Press, Printing	.30/60	....	.45/80	.50/90
Pulpboard	.80	....	.42½	.52½
Pumps ft.	.28⅞	.39⅔	.35/65	.40/75
Radios ft.	.33	....	.40	.47½
Rayon Waste	.50	....	.65	.80
Refrigerators ft.	.21¼	.22½	.25/50	.37½/70
Refrigerators, not Mechanical ft.	.20	....	.25/50	.37½/70
Rock Wool	.50	....	none	.80
Roofing Prepared	.35	....	none	....
Rubber Boots ft.	.25	....	.35	.45
Rubber Coated Cloth ft. [fol. 1920]	.35	....	.45/80	.50/90
Rubber Clothing ft.	.41¼	....	none	....
Rubber Cotton Cloth, Cemented	.80	....	none	....
Rubber Footwear ft.	.25	....	.35	.45
Rubber Goods ft.	.37⅛/.66	.42½/76½	.45/80	.50/90
Rubber Goods, specified ft.	.36⅛	.51	.45/80	.50/90
Rubber Hose ft.	.25	.51	.45/80	.50/90
Rubber Mats ft.	.37⅛	.38¼/68	.45/80	.50/90
Rugs W/M	9.38	....	none	....
Sewing Machines ft.	.34	....	.45	.50/90
Silk Waste	1.75	....	none	1.50

List of Isbrandtsen-Moller Co. Inc. Contract Rates per Period January 2, 1927 toA gust 31, 1939 to Antwerp-Rotterdam-Amsterdam

Commodity	Isbrandtsen Rate		Conference Rate*	
	Contract	Non Contract	Contract	Non Contract or Tariff
	(Rates per 100 lbs. except as noted)			
Skates, Roller ..... ft.	.22½	....	.25/50	.40/75
Soda, Bichromate	.40	....	none	.50
Soda, Caustic	.30	....	none	.30/55
Soda, Phosphate of	.37½	.42½/76½	none	.27½/50
Sodium, Fluoride	.73	....	none	....
Springs, Mattress ..... ft.	.20	.25½/46¾	none	.30/55
Stationery ..... ft.	.41¼	....	none	.50/90
Steel Bars ..... ton	5.25	....	6.00	8.00
Steel Plates—Rotterdam ton.	4.25	....	7.00	9.00
Steel Plates—Amsterdam ton	4.50	....	7.00	9.00
Steel Plates, Exceeding 1500 tons ..... ton	4.50	....	7.00	9.00
Steel Plates, Under 1500 tons. ton	4.95	....	7.00	9.00
Steel Sheet Bars ..... ton	5.00	....	6.00	8.00
Steel Ship Plates—Rotterdam only ..... ton	4.50	6.00	4.50	9.00
Steel Ship Plates—Amsterdam only ..... ton	5.45	....	4.50	9.00
Tallow & Grease, Inedible ...	.24¾	....	.33½	10.50 ton
Tire Parches ..... ft.	.37½	.42½/76½	.35/70	.45/80
Tires, Pneumatic ..... ft.	.20⅝	.28⅓	.25	.32½
Tires & Tubes ..... ft.	.20⅝	.28⅓	.25	.32½
Tobacco, Leaf	.50	.59½	.70	1.00
Tobacco Scrap	.50	.59½	.70	1.00
Tobacco, Unmanufactured.	.50	.59½	.70	1.00
Toilet Preparations ..... ft.	.57¾	.59½	none	.70
Tools ..... ft.	.41¼	....	none	.50/90
Toothpaste ..... ft.	.41¼	.56¾	.50	.70
Vacuum Cleaners ..... ft.	.32	.45⅓	.40	.45
Wax ..... bbls.	.32½	....	.42½	.55
Wax ..... bags	.30	....	.40	.55
Wax, White Crude Scale	.32½	....	none	....
Wax, Paraffine ..... bbls.	.36	....	.42½	.55
Wax, Paraffine ..... bags	.34	....	.40	.55

* Where Conference had no contract-non-contract rate basis, we have shown the Conference tariff rate in effect at the time.

ft.—per cubic foot.

Ton—per 2240 pounds.

W/M—ton of 2240 lbs. or ton of 40 cubic foot, whichever yields the greater revenue.

Optional Rates, namely, $.50/90 means per cubic foot or per 100 pounds, whichever yields the greater revenue.

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[fol. 1921]

Domestic Exports of Selected Agricultural Products to the Netherlands, Belgium-Luxembourg, and Germany, Which Moved in Commercial Vessels Via North Atlantic Ports During the Fiscal Year Ending June 30, 1948.

(Weights Shown are in 1,000 Pounds)

Commodity Exported	Country		
	Netherlands (1,000 lbs.)	Belgium & Luxembourg (1,000 lbs.)	Germany (1,000 lbs.)
Animal Products			
Dairy Products:			
Butter, natural	84	365	1
Cheese	11	30,174	6
Milk, condensed	126	14,608	
Milk, evaporated	965	96,530	
Milk, dried, whole	663	659	45
Non-fat dry milk solids	8,869	4,821	761
Total	10,718	147,157	813
Eggs and Egg Products:			
Eggs in the shell	177	1,275	
Egg albumen	33	246	
Egg products dried		40	5,141
Egg products frozen	32	2,968	
Total	242	4,529	5,141
Meats:			
Beef and veal, fresh or frozen	179	11,923	2,276
Horse meat	1,259	31,491	55
Pork, pickled or salted			161
Beef, canned	26	4	7
Pork, canned		174	5
Other canned meats	2	44	1,238
Poultry, fresh or frozen	26	1,292	
Sausage Casings, hog and beef	1,843	1,783	21
Total	3,335	46,711	3,763
Oils and Fats:			
Tallow, edible	654		
Lard, including neutral	1,394	26,204	19,831
Total	2,048	26,204	19,831
Vegetable Products			
Fruits, canned:			
Peaches	49	288	
Pears	4	87	
Other canned fruits	7	30	
Total	60	405	
Nuts:			
Peanuts, shelled		185	54
Total		185	54

Domestic Exports of Selected Agricultural Products to the Netherlands, Belgium-Luxembourg, and Germany, Which Moved in Commercial Vessels Via North Atlantic Ports During the Fiscal Year Ending June 30, 1948.

(Weights Shown are in 1,000 Pounds)

Commodity Exported	Country		
	Netherlands (1,000 lbs.)	Belgium & Luxembourg (1,000 lbs.)	Germany (1,000 lbs.)
Animal Products			
Tobacco, unmanufactured:			
Bright flue cured, unstemmed	23,534	10,476	
Bright flue cured, stemmed	217	211	
Burley	2,577	2,191	
Dark-fired Kentucky & Tennessee	256	210	
Dark Virginia	888	642	
Maryland and Ohio export	1,587	248	
Green River		14	
One sucker leaf		21	
Cigar leaf	1,620	581	
Total	30,679	14,594	
Grain and Grain Products:			
Malt		14,415	
Corn	38,076	64,897	193,938
Oats	16,558		
Oatmeal	23	4,736	3,127
Wheat grain	256,221	306,741	646,779
Wheat flour	8,305	4,143	88,146
Macaroni and products	690	8,962	944
Soya bean flour	24,360	9,228	2,729
Corn starch and corn flour		2,783	2,188
Total	344,233	415,905	937,851
Beans and Peas, dried:			
Beans		5	11
Peas			184
Total		5	195
Vegetables and Juices, canned:			
Baked beans and pork and beans	43	2,782	1
Peas	288	11,728	9,957
Soups		2,725	
Beans, green		1,274	5
Beans, lima	61	2,843	
Vegetables and juices, NES	10	3,200	2,529
Total	402	24,552	12,492
Sugar, refined	305	678	575
Total	305	678	575
Fruits, fresh:			
Apples		552	
Pears	292		
Total	292	552	

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RECAPITULATION

COMMODITY GROUP			
Animal Products			
Dairy products	10,718	147,157	813
Eggs and egg products	242	4,529	5,141
Meats	3,335	46,711	3,763
Oils and fats	2,048	26,204	19,831
Vegetable Products			
Fruits, canned	60	405	
Nuts		185	54
Tobacco, unmanufactured	30,679	14,594	
Grain and grain products	344,233	415,905	937,851
Beans and peas, dried		5	195
Vegetables and juices, canned	402	24,552	12,492
Sugar, refined	305	678	575
Fruits, fresh	292	552	
Total weight (1,000 lbs.)	392,314	681,477	980,715
Total tons (2,000 lbs.)	196,157	340,738.5	490,357.5

Grand Total: Pounds (1,000 lbs.) 2,054,506
Tons (2,000 lbs.) 1,027,253

Source: Compiled from Bureau of the Census form EM 562.

EXHIBIT No. 15

Witness: Chas. D. Turner

(Here follows 1 Paster, side folio 1922)

FOLDOUTS TOO LARGE TO

[fol. 1923]

EXHIBIT No. "17"

Witness: Chas. D. Turner

Domestic Exports[1] of Principal Agricultural Products to All Foreign Countries Which Moved Through Various Continental United States Ports During the Fiscal Year Ending June 30, 1948

Commodity Exported	Weight (1,000 pounds)
Animal Products	
Dairy Products:	
Butter	10,547
Cheese	103,930
Milk, condensed	128,898
Milk, evaporated	434,541
Milk, dried, whole	103,767
Non-fat dry milk solids	258,901
Total	1,040,584
Eggs and Egg Products:	
Eggs in the shell	11,325
Egg albumen	2,098
Egg products drieds	56,092
Egg products frozen	5,606
Egg products otherwise preserved	23
Total	75,144
Meats:	
Beef and veal, fresh or frozen	65,048
Horse meat	67,804
Mutton and lamb	7,132
Pork, fresh or frozen	3,668
Bacon and sides	3,968
Hams and shoulders	5,047
Pork, pickled or salted	14,197
Beef, canned	9,361
Pork, canned	7,083
Sausage, canned	4,796
Other canned meats	20,732
Total	208,836
Oils and Fats:	
Lard, including neutral	342,374
Oleomargarine of animal or vegetable fats	9,777
Oleo oil	109
Tallow	57,116
Total	409,376
Honey	6,202
Total Animal Products	1,740,142

EXHIBIT No. "17"

Witness: Chas. D. Turner

Domestic Exports' of Principal Agricultural Products to All Foreign Countries Which Moved Through Various Continental United States Ports During the Fiscal Year Ending June 30, 1948

Commodity Exported	Weight (1,000 pounds)
Vegetable Products	
Cotton and Linters Unmanufactured:	
Cotton	978,000
Linters	500,000
Total	1,478,000
Fruits, fresh:	
Apples	126,996
Grapes	94,353
Pears	70,436
Grapefruit	145,475
Lemons and limes	24,436
Oranges	560,572
Total	1,022,268
Fruits, dried and evaporated:	
Apples	3,727
Apricots	4,818
Figs	1,460
Fruits for salads	265
Peaches	2,848
Pears	846
Prunes	213,034
Raisins and currants	261,940
Dates	1,927
Other fruits	300
Total	491,165
Fruits, canned:	
Apples and applesauce	2,075
Apricots	11,969
Cherries	1,135
Fruits for salads	20,044
Grapefruit	773
Grapes	341
Loganberries	10
Other berries	1,292
Peaches	30,834
Pears	10,045
Pineapples	14,067
Prunes and plums	2,264
Other fruits	3,492
Fruit pulp	1,057
Total	85,354

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EXHIBIT No. "17"

Commodity Exported	Weight (1,000 pounds)
Vegetable Products—Cont'd.	
Fruit Juices:	
Grapefruit	41,812
Orange	36,477
Pineapple	6,860
Other fruit juice	43,665
Total	128,814
Grain and Grain Products:	
Barley	802,800
Malt	252,246
Corn	1,710,408
Corn meal	99,800
Corn starch and corn flour	204,718
Grain sorghums	717,472
Oats	361,440
Oatmeal	124,234
Rice, paddy or rough	80,415
Rice, cleaned or milled	858,454
Rye	125,832
Wheat	18,281,280
Wheat flour, wholly of U. S. wheat	7,803,500
Other wheat flour	45,800
Wheat, semolina	24,723
Feeds, cotton seed cake and meal	19,127
Feeds, Linseed cake and meal	28,197
Hops	11,114
Total	31,551,560
Nuts:	
Almonds, sweet	756
Filberts	1,044
Peanuts, shelled	337,317
Peanuts, not shelled	9,007
Pecans, shelled	314
Pecans, not shelled	222
Walnuts, shelled	718
Walnuts, not shelled	3,703
Other nuts and preparations	2,732
Total	355,813
Oils:	
Cooking fats other than lard	2,860
Corn, edible	295
Cotton seed oil	32,365
Linseed oil	27,560
Soybean oil, edible	45,727
Soybean oil, crude	82,941
Total	191,748
Soybeans and Soybean Flour:	
Soybeans	179,111
Soybean flour, edible	617,689
Total	796,800

EXHIBIT No. "17"

Witness: Chas. D. Turner

Which Moved Through Various Continental United States Ports During the Fiscal Year Ending June 30, 1948

Commodity Exported	Weight (1,000 pounds)
Vegetable Products—Cont'd.	
Sugar, refined	242,372
Timothy seed	13,387
Tobacco leaf:	
Black fat waterbaler and dark African	5,482
Bright flue-cured, stemmed	28,312
Bright flue-cured, unstemmed	284,502
Burley	37,801
Cigar leaf	6,404
Dark-fired Kentucky and Tennessee	18,766
Dark Virginia	7,282
Green River	950
Maryland and Ohio Export	6,416
One sucker leaf	1,818
Perique and other	100
Total	397,833
Vegetables, fresh or dried:	
Beans, seed	4,891
Other dried beans	255,987
Onions	62,968
Chickpeas	1,237
Cowpeas, dry	456
Peas, seed	39,939
Other dried peas	216,389
Potatoes, white	1,000,122
Tomatoes, fresh	26,383
Dehydrated soups	25,826
Dehydrated vegetables	21,068
Total	1,655,266
Vegetables, canned:	
Asparagus	10,698
Baked beans and pork and beans	9,733
Lima beans	4,486
Green beans	20,757
Corn	8,933
Peas	36,257
Soups	12,636
Spinach	2,299
Tomatoes	12,799
Tomato juice	10,602
Tomato paste and puree	23,879
Vegetables and juices, N.E.S.	22,532
Total	175,611

EXHIBIT No. "17"

Commodity Exported	Weight (1,000 pounds)
RECAPITULATION	
Animal Products	
Dairy products	1,040,584
Egg and egg products	75,144
Meats	208,836
Oils and fats	409,376
Honey	6,202
Total Animal Products	1,740,142
Vegetable Products	
Cotton and linters unmanufactured	1,478,000
Fruits, fresh	1,022,268
Fruits, dried or evaporated	491,165
Fruits, canned	85,354
Fruit juices	128,814
Grain and grain products	31,551,560
Nuts	355,813
Oils	191,748
Soybeans and soybean flour	796,800
Sugar, refined	242,372
Timothy seed	13,387
Tobacco leaf	397,833
Vegetables, fresh or dried	1,655,266
Vegetables, canned	175,611
Total Vegetable Products	40,063,991
Grand Total	41,804,133
or 20,902,066.5 tons (2,000 lbs.)	

[1] Export statistics include commercial, Economic Cooperation Administration, United States Foreign Relief, Interim aid, Greek-Turkish aid, UNRRA, Lend-lease, and Army Civilian Supply Program. Excluded from these figures are shipments to the United States armed forces abroad for their own use.

Source: Compiled from annual report for fiscal year 1947–48 issued by the Office of Foreign Agricultural Relations, U. S. Department of Agriculture.

EXHIBIT No. "17"

Witness: Chas. D. Turner

Which Moved Through Various Continental United States Ports During the Fiscal Year Ending June 30, 1948

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Bright flue-cured, unstemmed	284,502
Burley	37,801
Cigar leaf	6,404
Dark-fired Kentucky and Tennessee	18,766
Dark Virginia	7,282
Green River	950
Maryland and Ohio Export	6,416
One sucker leaf	1,818
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Total	397,833
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Timothy seed	13,887
Tobacco leaf	397,833
Vegetables, fresh or dried	1,655,266
Vegetables, canned	175,611
Total Vegetable Products	40,063,991
Grand Total	41,804,133
or 20,902,066.5 tons (2,000 lbs.)	

[1] Export statistics include commercial, Economic Cooperation Administration, United States Foreign Relief, Interim aid, Greek-Turkish aid, UNRRA, Lend-lease, and Army Civilian Supply Program. Excluded from these figures are shipments to the United States armed forces abroad for their own use.

Source: Compiled from annual report for fiscal year 1947–48 issued by the Office of Foreign Agricultural Relations, U. S. Department of Agriculture.

(Here follow 4 Photolithographs, side folios 1924, 1925, 1926 and 1927)

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TRANS-ATLANTIC ASSOCIATED FREIGHT CONFERENCES

TELEPHONE
WHITEHALL 4-6868

80 BROAD STREET
NEW YORK 4, N.Y.

CABLE
TRANSCONFER

October 1, 1948.

RECEIVED
OCT 4 19..
By JOSEPH TURNER & CO.

Mr. E. J. Quackenbush - Export Mgr.
Joseph Turner & Company
Box 317
Ridgefield, N. J.

Dear Sir:

POTASSIUM BICHROMATE - PIRAEUS

It is reported to us that you had a shipment of Potassium Bichromate on the S/S "CENTAURO" to Piraeus. In this respect we refer to your contract dated July 7, 1948 with the Conference Carriers to Mediterranean Ports which does not permit of shipment on this vessel and will appreciate receiving your prompt advices in this matter.

Very truly yours

NORTH ATLANTIC MEDITERRANEAN FREIGHT CONFERENCE

C. R. Andrews
CHAIRMAN

AA7

EXHIBIT "18"

1944

1924

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EXHIBIT "19"

TELEPHONE
N. Y. - CHickering 4-7131-2-3
N. J. - MOrsemere 6-5630-1

CABLE ADDRESS
"JOSTURNER, NEW YORK"
CODES
A.B.C. 5TH EDITION IMPROVED
BENTLEY'S WITH APPENDIX

JOSEPH TURNER & CO.
CHEMICALS
EXPORT — IMPORT
RIDGEFIELD, NEW JERSEY
U. S. A.

ALL QUOTATIONS ARE SUBJECT TO VARIATION WITHOUT NOTICE

INQUIRIES INVITED FOR
Acetate Dyes
Aluminum Compounds
Ammonium Compounds
Antimony Sulphide
Bicarbonate of Soda
Bichromate of Potash
Bichromate of Soda
Bleaching Powder
Borax
Boric Acid
Bromides of
Ammonium
Calcium
Potassium
Sodium
Calcium Chloride
Carbon Tetrachloride
Carbonate of Potash
Castor Oil
Caustic Potash
Caustic Soda
Chlorate of Potash
Chlorate of Soda
Chloroform
Citric Acid
Cocoanut Oil
Copper Compounds
Corn Oil
Cottonseed Oil
Cyanides of
Copper
Potash
Soda
Zinc
Epsom Salts
Fatty Acids
Formaldehyde
Glauber Salts
Glycerine
Iron Phosphate
Lard Oil
Metasilicate of Soda
Naphthalene
Naphthenic Acid
Naphthol Dyes
Neatsfoot Oil
Oleic Acid—Red Oil
Olive Oil
Olive Oil Foots
Oxalic Acid
Palm Oil
Palm Kernel Oil
Perchlorethylene
Peanut Oil
Perchlorate of Ammonia
Perchlorate of Potash
Phenol
Phosphorus
Phosphorus Compounds
Pine Oil
Prussiate (Potash Lithium Salt)
Potassium Chlorate
Potassium Metabisulphite
Potassium Permanganate
Potassium Silicate
Rapeseed Oil
Resin
Salad Oil
Sal Ammoniac
Sesame Oil
Silicate of Soda
Soda Ash
Sodium Chloride
Sodium Sulphide
Soya Bean Oil
Stearates of
Aluminum
Calcium
Magnesium
Zinc
Stearic Acid
Sunflower Oil
Tallow
Tartaric Acid
Tenasol Oil
Tri-Sodium Phosphate
Wood Rosin
White Mineral Oil
White Onions

October 6, 1948.

Trans-Atlantic Associated Freight Conferences
80 Broad Street
New York 4, New York.

Att'n:- Mr. C. R. Andrews
Chairman.

Ref:- POTASSIUM BICHROMATE - PIRAEUS.

Gentlemen:-

We acknowledge receipt of your letter of October 1st, relative to the above shipment on the S/S Centauro to Piraeus.

This material was sold by us directly to Simeon Almosnino in Thessaloniki, Greece. We were instructed by our customer to deliver this material to his agent in this country from whom we received payment. The agent in this country instructed us to deliver this material to the S/S Centauro.

We hope that the above explanation is satisfactory to you and will appreciate receiving your comment.

Very truly yours,

RJQ/m.

R. J. Quackenbush.
Export Div.

1925

SERVING INDUSTRY SINCE 1861

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EXHIBIT "20"

TRANS-ATLANTIC ASSOCIATED FREIGHT CONFERENCES

TELEPHONE
WHITEHALL 4-0990

80 BROAD STREET
NEW YORK 4, N.Y.

CABLE
TRANSCONFER

October 14, 1948.

RECEIVED
OCT 15 1948
BY JOSEPH TURNER & CO.

Mr. F. J. Quackenbush
Export Division
Joseph Turner & Co.
Ridgefield, New Jersey

Dear Sir:

POTASSIUM BICHROMATE - PIRAEUS

Acknowledging your letter of October 6, 1948 which replies to ours of the 1st instant, I note your explanation but it is understood that you will not accord to any one, including Messrs Almosnino in Salonica, Greece not having a similar obligation the benefits of your contract with us. In other words, irrespective of the method of purchase i.e. f.o.b. local storage, f.a.s. wagon or c.i.f., should anyone receive the benefit of your agreement, they must automatically assume its obligations. Shippers or receivers, who do not agree to leave the routing with you for the entire period are not, at any time, to receive the benefits of your contract and we expect you to call to our attention each such specific shipment.

Very truly yours

NORTH ATLANTIC MEDITERRANEAN FREIGHT CONFERENCE

C. F. Andrews
CHAIRMAN

AFF

1926

POOR COPY

11949

EXHIBIT "25"

MAERSK LINE
REGULAR SAILINGS TO AND FROM
JAPAN CHINA PHILIPPINES

REGULAR SAILINGS TO AND FROM EUROPE

CABLE ADDRESS "ISHOLCO"
TELEPHONE WHITEHALL 4-2200

Isbrandtsen-Moller Company, Inc.
WORLD WIDE CARRIERS OF FREIGHT

26 BROADWAY
NEW YORK

Gentlemen:

We confirm arrangement agreed upon covering your shipments, commodities and ports shown below, during the period from_____to_____. You have agreed to offer all of your shipments to the Isbrandtsen-Moller Company, Inc., and we have agreed to protect the following rates on sailings scheduled between the ports mentioned:

You shall have the option of selecting any of the vessels operated by the Isbrandtsen-Moller Company, Inc., subject to specific agreement between us as to quantity to be shipped on the carrying vessel, and the port or ports of loading, call and discharge. Arrangements for the actual carriage of specific shipments of the commodity or commodities covered by this agreement are to be made individually with us, and the shipments shall be subject to all the terms, conditions and exceptions expressed in the permits, dock receipts, mate's receipts and regular form of bill of lading of the Isbrandtsen-Moller Company, Inc., at the time of the shipments.

In the event of war or hostilities between countries or peoples, affecting or likely to affect vessel(s) or cargo(es) in the trade covered herein, either party shall have the option of cancelling this agreement.

It is understood that if you have shipments which, on account of delivery requirements, cannot be held and sent with our next sailing, it will not be counted a breach of this agreement for you to send such shipments on other lines, provided we are notified of such instances and that the prevailing rates of such other lines are paid.

[fol. 1928] EXHIBIT "28"

Isbrandtsen, 26 Broadway, New York

Copy of cable received

May 26, 1949.

Steamship Crinkley

IML/RC1/MH
HDL 374 Amsterdam 24/23 25 1157
NLT Isbrandtsen New York

30 re ourlet May fourteenth Bethlehem Steel having signed Conference Contract advised consignees cannot ship wire Isbrandtsen please contact shippers.

Vinkeco.

[fol. 1929] EXHIBIT "29"

Isbrandtsen Lines

Agents:

Vinke & Co.

Amsterdam—C

May 19, 1949
P. O. B. 485

Our ref. Isbr./Dx/dH

Messrs. Isbrandtsen Company, Inc.
26, Broadway, New York 4, N. Y.

Gentlemen:

Re *Tobacco Shipments*

With reference to your letter of the 30th of March last to our Mr. A. Vinke of Rotterdam, we have had the pleasure to have a very interesting discussion, together with your Mr. Grant, with the Local Government Tobacco Bureau.

As a consequence of the discussion the writer has had a further talk with Mr. Visser, one of the members of the Tobacco Bureau's Board.

As you know they are bound by contract to the Conference and that contract expires in July or August next, on

account of which fact we have been able to get Mr. Visser to hold a special meeting of all the members of the Tobacco Bureau on the 2nd of June next in order to discuss the question of cancelling this contract in order to give a fair share of their shipments to our line. Moreover, Mr. Visser promised us upon our respective request to do his very utmost to arrange for your Mr. Grant and ourselves to be present at that meeting so as to enable Mr. Grant and us to once more make clear the advantages of supporting your independent service.

Should this not be possible for Mr. Visser, we will try to arrange a special meeting with him personally and we will keep you well informed of the result of all our respective efforts.

In the meantime we remain, Gentlemen, always at your disposal,

Yours very truly, Vinke & Co. (Signed) W. J. Diederix.

cc: Vinke & Co., Rotterdam.

[fols. 1930-1942] EXHIBIT 30

INTERNATIONAL TRANSPORT

Report of Committee on International Transport

Chamber of Commerce of the United States of America. May 1949. [Seal.]

Transportation and Communication Department, Chamber of Commerce of the United States, Washington 6, D. C.

[fol. 1943] RATE CONFERENCES

Agreement among carriers in matters of rates and service has been long established as the method of controlling competition in ocean transportation. When competing overseas air services were established, it was also accepted

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as the natural way to deal with such matters in international air transportation.

The determination of rates and collateral matters through conference action, as permitted by the Shipping Act of 1916 and the Civil Aeronautics Act of 1938, does not eliminate competition among conference members but does tend to regulate and control it to the benefit of both the shippers and the operators. It also provides flexibility to meet the changing requirements of international commerce.

Conferences are a protection both to shippers and the operators. Shippers are benefited by stability and uniformity of rates, regularity of service, economy in the cost of service and equality of treatment. Operators benefit from the stability provided their operations, lower operating costs and greater security in their trades and for their investments.

[fol. 1944] In view of the advantages of the conference system of rate-making in international trade, we believe that *the determination of rates for both sea and air services should continue to be handled through the time-proven system of conferences established by the carriers of all nationalities engaged in each trade, governmental supervision being exercised as now permitted and authorized by the Shipping Act of 1916 and the Civil Aeronautics Act of 1938.*